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The rule of law and transitional justice in conflict and post-conflict societies

Report of the Secretary-General

Summary

Recent years have seen an increased focus by the United Nations on questions of transitional justice and the rule of law in conflict and post-conflict societies, yielding important lessons for our future activities. Success will depend on a number of critical factors, among them the need to ensure a common basis in international norms and standards and to mobilize the necessary resources for a sustainable investment in justice. We must learn as well to eschew one-size-fits-all formulas and the importation of foreign models, and, instead, base our support on national assessments, national participation and national needs and aspirations. Effective strategies will seek to support both technical capacity for reform and political will for reform. The United Nations must therefore support domestic reform constituencies, help build the capacity of national justice sector institutions, facilitate national consultations on justice reform and transitional justice and help fill the rule of law vacuum evident in so many post-conflict societies.

Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives. Advancing all three in fragile post-conflict settings requires strategic planning, careful integration and sensible sequencing of activities. Approaches focusing only on one or another institution, or ignoring civil society or victims, will not be effective. Our approach to the justice sector must be comprehensive in its attention to all of its interdependent institutions, sensitive to the needs of key groups and mindful of the need for complementarity between transitional justice mechanisms. Our main role is not to build international substitutes for national structures, but to help build domestic justice capacities.

In some cases, international or mixed tribunals have been established to address past crimes in war-torn societies. These tribunals have helped bring justice and hope to victims, combat the impunity of perpetrators and enrich the jurisprudence of international criminal law. They have, however, been expensive and have contributed little to sustainable national capacities for justice administration. The International Criminal Court offers new hope for a permanent reduction in the phenomenon of impunity and the further ratification of its statute is thus to be encouraged.

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But while tribunals are important, our experience with truth commissions also shows them to be a potentially valuable complementary tool in the quest for justice and reconciliation, taking as they do a victim-centred approach and helping to establish a historical record and recommend remedial action. Similarly, our support for vetting processes has shown them to be a vital element of transitional justice and, where they respect the rights of both victims and the accused, key to restoring public trust in national institutions of governance. Victims also benefit from well-conceived reparations programmes, which themselves help ensure that justice focuses not only on perpetrators, but also on those who have suffered at their hands. Strengthening United Nations support in all these areas will require efforts to enhance coordination among all actors, develop our expert rosters and technical tools and more systematically record, analyse and apply these lessons in Security Council mandates, peace processes and the operations of United Nations peace missions.

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I. Introduction

1. On 24 September 2003, the Security Council met at the ministerial level to discuss the United Nations role in establishing justice and the rule of law in post-conflict societies.[1] In an open meeting on 30 September 2003, Member States were invited to contribute to this process.[2] In a statement issued at the conclusion of the 24 September meeting,[3] the President, on behalf of the Security Council, noted the wealth of relevant expertise and experience within the United Nations system and highlighted the need to harness and direct this expertise and experience so that the lessons and experience of the past could be learned and built upon. The Council welcomed my offer to provide a report that could inform the Security Council's further consideration of these matters. At its 26 January 2004 meeting on "Post-conflict national reconciliation: the role of the United Nations", the Security Council invited me to give, in the present report, consideration to the views expressed in that debate.[4] The present report is submitted in compliance with those requests.

II. Strengthening the rule of law and transitional justice in the wake of conflict

2. The objective of the present report is to highlight key issues and lessons learned from the Organization's experiences in the promotion of justice and the rule of law in conflict and post-conflict societies.[5] Our experience in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice. At the same time, the heightened vulnerability of minorities, women, children, prisoners and detainees, displaced persons, refugees and others, which is evident in all conflict and post-conflict situations, brings an element of urgency to the imperative of restoration of the rule of law.

3. And yet, helping war-torn societies re-establish the rule of law and come to terms with large-scale past abuses, all within a context marked by devastated institutions, exhausted resources, diminished security and a traumatized and divided population, is a daunting, often overwhelming, task. It requires attention to myriad deficits, among which are a lack of political will for reform, a lack of institutional independence within the justice sector, a lack of domestic technical capacity, a lack of material and financial resources, a lack of public confidence in Government, a lack of official respect for human rights and, more generally, a lack of peace and security. Over the years, the United Nations has accumulated significant expertise in addressing each of these key deficits. Departments, agencies, programmes and funds and specialists across the system have been deployed to numerous transitional, war-torn and post-conflict countries to assist in the complex but vital work of rule of law reform and development.

4. Of course, in matters of justice and the rule of law, an ounce of prevention is worth significantly more than a pound of cure. While United Nations efforts have been tailored so that they are palpable to the population to meet the immediacy of their security needs and to address the grave injustices of war, the root causes of conflict have often been left unaddressed. Yet, it is in addressing the causes of

conflict, through legitimate and just ways, that the international community can help prevent a return to conflict in the future. Peace and stability can only prevail if the population perceives that politically charged issues, such as ethnic discrimination, unequal distribution of wealth and social services, abuse of power, denial of the right to property or citizenship and territorial disputes between States, can be addressed in a legitimate and fair manner. Viewed this way, prevention is the first imperative of justice.

III. Articulating a common language of justice for the United Nations

5. Concepts such as "justice", "the rule of law" and "transitional justice" are essential to understanding the international community's efforts to enhance human rights, protect persons from fear and want, address property disputes, encourage economic development, promote accountable governance and peacefully resolve conflict. They serve both to define our goals and to determine our methods. Yet, there is a multiplicity of definitions and understandings of such concepts, even among our closest partners in the field. At an operational level, there is, for some, a fair amount of overlap with other related concepts, such as security sector reform, judicial sector reform and governance reform. To work together effectively in this field, a common understanding of key concepts is essential.

6. The "rule of law" is a concept at the very heart of the Organization's mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

7. For the United Nations, "justice" is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant. The international community has worked to articulate collectively the substantive and procedural requirements for the administration of justice for more than half a century.

8. The notion of "transitional justice" discussed in the present report comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.

IV. Basing assistance on international norms and standards

9. The normative foundation for our work in advancing the rule of law is the Charter of the United Nations itself, together with the four pillars of the modern international legal system: international human rights law;[6] international humanitarian law; international criminal law; and international refugee law. This includes the wealth of United Nations human rights and criminal justice standards developed in the last half-century.[7] These represent universally applicable standards adopted under the auspices of the United Nations and must therefore serve as the normative basis for all United Nations activities in support of justice and the rule of law.

10. United Nations norms and standards have been developed and adopted by countries across the globe and have been accommodated by the full range of legal systems of Member States, whether based in common law, civil law, Islamic law, or other legal traditions. As such, these norms and standards bring a legitimacy that cannot be said to attach to exported national models which, all too often, reflect more the individual interests or experience of donors and assistance providers than they do the best interests or legal development needs of host countries. These standards also set the normative boundaries of United Nations engagement, such that, for example, United Nations tribunals can never allow for capital punishment, United Nations-endorsed peace agreements can never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights, and, where we are mandated to undertake executive or judicial functions, United Nations-operated facilities must scrupulously comply with international standards for human rights in the administration of justice.

V. Identifying the role of United Nations peace operations

11. Not all peace operations are mandated to address transitional justice and rule of law activities. Transitional administrations in Kosovo (United Nations Interim Administration Mission in Kosovo) and Timor-Leste (United Nations Transitional Administration in East Timor/United Nations Mission of Support in East Timor), however, have had direct responsibility for the administration of judiciaries, police and prison services. Others, including those in El Salvador (United Nations Observer Mission in El Salvador) and Guatemala (United Nations Verification Mission in Guatemala), as well as more recent operations in Côte d'Ivoire (United Nations Mission in Côte d'Ivoire/United Nations Operation in Côte d'Ivoire), Liberia (United Nations Mission in Liberia) and Haiti (United Nations Stabilization Mission in Haiti), have had important rule of law and justice components, illustrating the increased attention given by the United Nations to these questions.

12. At the Headquarters level, support for rule of law and transitional justice aspects of peace operations includes needs assessment, mission planning, selection and deployment of specialized staff and provision of guidance and support to rule of law components of missions. On the ground, our operations have worked, inter alia, to strengthen domestic law enforcement and justice institutions, facilitate national consultations on justice reform, coordinate international rule of law assistance, monitor and report on court proceedings, train national justice sector officials, support local judicial reform bodies and advise host country rule of law institutions. Our operations have helped national actors vet and select national police, judges and

prosecutors, draft new constitutions, revise legislation, inform and educate the public, develop ombudsman institutions and human rights commissions, strengthen associations of criminal defence lawyers, establish legal aid, set up legal-training institutes and build the capacity of civil society to monitor the justice sector. Peace missions have also helped host countries to address past human rights abuses by establishing tribunals, truth and reconciliation mechanisms and victim reparation programmes.

13. This range of activities would be demanding in any circumstances. The challenge is compounded by the fact that the United Nations is frequently called upon to plan the rule of law components of peace operations on extremely short notice, based on short assessment visits to the host country and with minimal human and financial resources. With limited staff devoted to rule of law and transitional justice issues, the United Nations has been stretched to address rule of law planning needs for new missions, while simultaneously providing support to rule of law activities in existing operations. Matching sufficient resources in the headquarters of relevant departments with the growing demands for rule of law support to peace operations is an issue that will require early and considered attention by the Secretariat. I intend to instruct the Executive Committee on Peace and Security to review these questions, with a mind to making proposals to Member States for the strengthening of these resources.

VI. Assessing national needs and capacities

14. In formulating recommendations for the Security Council, planning mission mandates and structures, and conceiving assistance programmes, it is imperative that both the Security Council and the United Nations system carefully consider the particular rule of law and justice needs in each host country. Accordingly, we must assess myriad factors, such as the nature of the underlying conflict, the will of the parties, any history of widespread abuse, the identification of vulnerable groups, such as minorities and displaced persons, the situation and role of women, the situation of children, rule of law implications of peace agreements and the condition and nature of the country's legal system, traditions and institutions.

15. Unfortunately, the international community has not always provided rule of law assistance that is appropriate to the country context. Too often, the emphasis has been on foreign experts, foreign models and foreign-conceived solutions to the detriment of durable improvements and sustainable capacity. Both national and international experts have a vital role to play, to be sure. But we have learned that effective and sustainable approaches begin with a thorough analysis of national needs and capacities, mobilizing to the extent possible expertise resident in the country. Increasingly, the United Nations is looking to nationally led strategies of assessment and consultation carried out with the active and meaningful participation of national stakeholders, including justice sector officials, civil society, professional associations, traditional leaders and key groups, such as women, minorities, displaced persons and refugees. In such cases, national bodies are taking the lead in carrying out diagnostics of the justice sector by mobilizing national legal professionals and are leading national consultations and assessments relating to transitional justice. In these processes, the United Nations can help facilitate meetings, provide legal and technical advice, promote the participation of women and traditionally excluded groups, support capacity-building and help mobilize

financial and material resources, while leaving process leadership and decision-making to the national stakeholders.

16. Similarly, the most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out. Local consultation enables a better understanding of the dynamics of past conflict, patterns of discrimination and types of victims. Although the international community has, at times, imposed external transitional justice solutions, a more open and consultative trend is emerging, visible in places such as Sierra Leone and Afghanistan. Although the lessons of past transitional justice efforts help inform the design of future ones, the past can only serve as a guideline. Pre-packaged solutions are ill-advised. Instead, experiences from other places should simply be used as a starting point for local debates and decisions.

VII. Supporting domestic reform constituencies

17. Ultimately, no rule of law reform, justice reconstruction, or transitional justice initiative imposed from the outside can hope to be successful or sustainable. The role of the United Nations and the international community should be solidarity, not substitution. As discussed above, it is essential that these efforts be based upon meaningful public participation involving national legal professionals, Government, women, minorities, affected groups and civil society. Countless pre-designed or imported projects, however meticulously well-reasoned and elegantly packaged, have failed the test of justice sector reform. Without public awareness and education campaigns, and public consultation initiatives, public understanding of and support for national reform efforts will not be secured. Civil society organizations, national legal associations, human rights groups and advocates of victims and the vulnerable must all be given a voice in these processes. Most importantly, our programmes must identify, support and empower domestic reform constituencies. Thus, peace operations must better assist national stakeholders to develop their own reform vision, their own agenda, their own approaches to transitional justice and their own national plans and projects. The most important role we can play is to facilitate the processes through which various stakeholders debate and outline the elements of their country's plan to address the injustices of the past and to secure sustainable justice for the future, in accordance with international standards, domestic legal traditions and national aspirations. In doing so, we must learn better how to respect and support local ownership, local leadership and a local constituency for reform, while at the same time remaining faithful to United Nations norms and standards.

18. Support for reform must be cultivated among all groups in society, including elites, ex-combatants and (non-criminal) elements of former regimes, all of whom must be reassured that they will be protected from unlawful or unfair retribution and offered a real chance at reintegration into their society. Finally, in post-conflict situations and where transitional justice processes are under consideration, a particularly important constituency is the country's victims. The United Nations must assess and respect the interests of victims in the design and operation of transitional justice measures. Victims and the organizations that advocate on their behalf deserve the greatest attention from the international community.

VIII. Recognizing the political context

19. While effective rule of law strategies necessarily focus on legal and institutional requirements, due attention must be paid to political elements as well. Re-establishing justice systems, planning rule of law reforms and agreeing on transitional justice processes are activities of the highest public interest. They are therefore necessary subjects of serious public consultation and debate and, thus, as much political questions as technical ones. Institutions receiving international assistance cannot reasonably be evaluated in terms of their enhanced efficiency alone, without regard to their commitment to human rights or the responsibility of their public discourse. In some cases, State authorities have been more concerned with consolidation of power than with strengthening the rule of law, with the latter often perceived as a threat to the former. As such, my senior representatives in the field must give dedicated attention to supporting the political aspects of justice and rule of law reforms. Their good offices can be crucial to securing political space for reformers, insulating law enforcement from political abuse and mobilizing resources for the strengthening of the justice sector.

20. And yet, the international community has frequently underestimated the extent of political will necessary to support effective rule of law reform in post-conflict States and invested inadequately in public consultations on reform questions. As a result, justice strategies and assistance programmes have sometimes neglected to facilitate consensus among important stakeholders on the nature and pace of reforms and new institutions. Here too the United Nations has a role. Just as we have supported national consultations in the form of elections and referendums, so must we support and facilitate national consultations aimed at determining the national course for transitional justice or rule of law reform.

21. Equally important is the fact that rule of law reforms and transitional justice activities often occur simultaneously with post-conflict elections, as well as with the unfolding of fragile peace processes. Careful sequencing of such processes is vital to their success and legitimacy. Justice and peace are not contradictory forces. Rather, properly pursued, they promote and sustain one another. The question, then, can never be whether to pursue justice and accountability, but rather when and how. This means recognizing that United Nations peace operations, with some notable exceptions, are planned as short-term interventions, while accounting for the past, building the rule of law and fostering democracy are long-term processes. As such, strategic planning should, from the beginning, take account of the need for phasing and for post-mission international support in these areas, including long-term development assistance.

22. A related question is the timing of electoral processes. Recent experience has demonstrated that holding elections without adequate political and security preparation and disengaging too soon can undermine, rather than facilitate, the process of building the rule of law. Yet, the international community still sometimes encourages early elections in post-conflict States in an attempt to lend legitimacy to political leaders, processes and institutions. But premature elections can bring about only cosmetic electoral democracies, at best. In many cases, elections held in non-permissive security conditions exclude the meaningful participation of key groups, while exposing people to undue personal risk. In others, candidates and parties from the old political order, lacking a commitment to democratic principles and human

rights, use premature elections to consolidate their power. At worst, they can radicalize political discourse and even lead to renewed conflict.

IX. Embracing integrated and complementary approaches

23. Our experience confirms that a piecemeal approach to the rule of law and transitional justice will not bring satisfactory results in a war-torn or atrocity-scarred nation. Effective rule of law and justice strategies must be comprehensive, engaging all institutions of the justice sector, both official and non-governmental, in the development and implementation of a single nationally owned and led strategic plan for the sector. Such strategies must include attention to the standards of justice, the laws that codify them, the institutions that implement them, the mechanisms that monitor them and the people that must have access to them.

24. These are hard-learned lessons, drawn from decades of United Nations experience on the ground. For example, international efforts have sometimes focused on re-establishing police services, while paying scant attention to other justice sector components, such as legislative work, crime prevention, judicial development, legal education, prison reform, prosecutorial capacity, victim protection and support, civil society support, citizenship and identification regulation, and property dispute resolution. Yet all of these are essential to the rule of law and all are interdependent. Neglect of one inevitably leads to the weakening of the others.

25. In other cases, the international community has rushed to prescribe a particular formula for transitional justice, emphasizing either criminal prosecutions or truth-telling, without first affording victims and national constituencies the opportunity to consider and decide on the proper balance. The international community must see transitional justice in a way that extends well beyond courts and tribunals. The challenges of post-conflict environments necessitate an approach that balances a variety of goals, including the pursuit of accountability, truth and reparation, the preservation of peace and the building of democracy and the rule of law. A comprehensive strategy should also pay special attention to abuses committed against groups most affected by conflict, such as minorities, the elderly, children, women, prisoners, displaced persons and refugees, and establish particular measures for their protection and redress in judicial and reconciliation processes. For example, protection measures for children can include provisions for hearings in camera, pre-recorded testimonies, videoconferencing and the use of pseudonyms to protect the identity of child witnesses.

26. Where transitional justice is required, strategies must be holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriately conceived combination thereof. The United Nations must consider through advance planning and consultation how different transitional justice mechanisms will interact to ensure that they do not conflict with one another. It is now generally recognized, for example, that truth commissions can positively complement criminal tribunals, as the examples of Argentina, Peru, Timor-Leste and Sierra Leone suggest. And in Timor-Leste, the Serious Crimes Unit worked in close conjunction with the Reception, Truth and Reconciliation Commission, as provided for in Regulation

No. 2001/10 of the United Nations Transitional Administration in East Timor, which established the Commission's terms of reference.

X. Filling a rule of law vacuum

27. In post-conflict settings, legislative frameworks often show the accumulated signs of neglect and political distortion, contain discriminatory elements and rarely reflect the requirements of international human rights and criminal law standards. Emergency laws and executive decrees are often the order of the day. Where adequate laws are on the books, they may be unknown to the general public and official actors may have neither the capacity nor the tools to implement them. National judicial, police and corrections systems have typically been stripped of the human, financial and material resources necessary for their proper functioning. They also often lack legitimacy, having been transformed by conflict and abuse into instruments of repression. Such situations are invariably marked by an abundance of arms, rampant gender and sexually based violence, the exploitation of children, the persecution of minorities and vulnerable groups, organized crime, smuggling, trafficking in human beings and other criminal activities. In such situations, organized criminal groups are often better resourced than local government and better armed than local law enforcement. Restoring the capacity and legitimacy of national institutions is a long-term undertaking. However, urgent action to restore human security, human rights and the rule of law cannot be deferred. Thus, United Nations peace operations are often called upon to help fill this rule of law vacuum.

28. Indeed, in some cases, we have faced the difficulties of conducting peace operations where there are no functioning criminal justice mechanisms at all. In such situations, peacekeepers have encountered wrongdoers in the midst of committing serious criminal acts of a direct threat to civilians and to the operation itself. Military components typically lack the training, skills and resources to address such situations. At the same time, civilian components of peace operations, including police, are often too slowly deployed and are seldom mandated to undertake executive functions, such as arrest. Yet such lawlessness can seriously undermine the efforts of an entire peace operation. Given these realities, we must, together with Member States, rethink our current strategies for addressing the rule of law vacuum into which we are often deployed, including the role, capacities and obligations of military and civilian police components.

29. In some situations, where this problem has been most acute, civilian police in peace missions have been mandated to undertake executive functions, including powers of arrest and detention. While, in most cases, United Nations civilian police provide operational support and advice and are not empowered to carry out executive functions, their responsibilities have grown ever more complex. In every case, their role is central to the restoration of the rule of law and worthy of better support and more resources. The simple presence of law enforcement officials on the streets after a conflict can substantially reduce looting, harassment, rape, robbery and murder. After some 20 years of United Nations experience, this is an area that would benefit from a serious review, in order that we might consider ways to bolster our efforts.

30. But, as discussed above, while policing interventions in post-conflict environments are a crucial component of the rule of law continuum, they must be

linked to parallel support to the other institutions and functions of the justice system. Enhancing the capacity of police (or United Nations Civilian Police) to make arrests cannot be seen as a contribution to the rule of law if there are no modern laws to be applied, no humane and properly resourced and supervised detention facilities in which to hold those arrested, no functioning judiciary to try them lawfully and expeditiously, and no defence lawyers to represent them. Progress has been made in recent years to address such lacunae, including a number of dedicated projects to develop transitional codes, guidelines and rule of law policy tools, as recommended in the report of the Panel on United Nations Peace Operations.[8] In the coming months, many of these new tools will be finalized.

31. The establishment of independent national human rights commissions is one complementary strategy that has shown promise for helping to restore the rule of law, peaceful dispute resolution and protection of vulnerable groups where the justice system is not yet fully functioning. Many have been established in conflict and post-conflict societies with mandates including quasi-judicial functions, conflict-resolution and protection programmes. Recent examples include the national human rights institutions of Afghanistan, Rwanda, Colombia, Indonesia, Nepal, Sri Lanka and Uganda, each of which is now playing an important role in this regard. Exceptional fact-finding mechanisms have also been mobilized by the United Nations with increasing frequency, such as the ad hoc international commissions of inquiry established to look into war crimes committed in places such as the former Yugoslavia, Rwanda, Burundi and Timor-Leste.

32. Additionally, strategies for expediting a return to the rule of law must be integrated with plans to reintegrate both displaced civilians and former fighters. Disarmament, demobilization and reintegration processes are one of the keys to a transition out of conflict and back to normalcy. For populations traumatized by war, those processes are among the most visible signs of the gradual return of peace and security. Similarly, displaced persons must be the subject of dedicated programmes to facilitate return. Carefully crafted amnesties can help in the return and reintegration of both groups and should be encouraged, although, as noted above, these can never be permitted to excuse genocide, war crimes, crimes against humanity or gross violations of human rights.

33. Finally, better safeguards must be established to ensure that the very interventions designed to protect vulnerable and victimized groups, including women and children, do not result in their further victimization. In such situations, women often suffer from domestic violence in the home and targeted violence in the public sphere. Addressing the all too common sexual abuse, exploitation and traumatization of these groups in conflict and post-conflict settings requires special skills, resources and mechanisms to ensure that law enforcement personnel, peacekeepers and others who interact with them do not unintentionally contribute to or exacerbate their suffering. And it is critically important that those who seek to abuse or exploit them are held accountable. Indeed, if the rule of law means anything at all, it means that no one, including peacekeepers, is above the law. For this reason, I have issued a bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13), setting out minimum standards of behaviour expected of all United Nations personnel, as well as measures necessary to prevent sexual exploitation and abuse.

XI. Developing national justice systems

34. While the international community is obliged to act directly for the protection of human rights and human security where conflict has eroded or frustrated the domestic rule of law, in the long term, no ad hoc, temporary or external measures can ever replace a functioning national justice system. Thus, for decades, a number of United Nations entities have been engaged in helping countries to strengthen national systems for the administration of justice in accordance with international standards.

35. Effective strategies for building domestic justice systems will give due attention to laws, processes (both formal and informal) and institutions (both official and non-official). Legislation that is in conformity with international human rights law and that responds to the country's current needs and realities is fundamental. At the institutional core of systems based on the rule of law is a strong judiciary, which is independent and adequately empowered, financed, equipped and trained to uphold human rights in the administration of justice. Equally important are the other institutions of the justice sector, including lawful police services, humane prison services, fair prosecutions and capable associations of criminal defence lawyers (oft-forgotten but vital institutions). Beyond the criminal law realm, such strategies must also ensure effective legal mechanisms for redressing civil claims and disputes, including property disputes, administrative law challenges, nationality and citizenship claims and other key legal issues arising in post-conflict settings. Juvenile justice systems must be put in place to ensure that children in conflict with the law are treated appropriately and in line with recognized international standards for juvenile justice. Justice sector institutions must be gender sensitive and women must be included and empowered by the reform of the sector. Legal education and training and support for the organization of the legal community, including through bar associations, are important catalysts for sustained legal development.

36. Our programmes must also support access to justice, to overcome common cultural, linguistic, economic, logistical or gender-specific impediments. Legal aid and public representation programmes are essential in this regard. Additionally, while focusing on the building of a formal justice system that functions effectively and in accordance with international standards, it is also crucial to assess means for ensuring the functioning of complementary and less formal mechanisms, particularly in the immediate term. Independent national human rights commissions can play a vital role in affording accountability, redress, dispute resolution and protection during transitional periods. Similarly, due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition. Where these are ignored or overridden, the result can be the exclusion of large sectors of society from accessible justice. Particularly in post-conflict settings, vulnerable, excluded, victimized and marginalized groups must also be engaged in the development of the sector and benefit from its emerging institutions. Measures to ensure the gender sensitivity of justice sector institutions is vital in such circumstances. With respect to children, it is also important that support be given to nascent institutions of child protection and juvenile justice, including for the development of alternatives to detention, and for the enhancement of the child protection capacities of justice sector institutions.

37. Recent national experience suggests that achieving these complex objectives is best served by the definition of a national process, guided by a national justice plan and shepherded by specially appointed independent national institutions, such as judicial or law commissions. Our support for such processes and bodies can help ensure that development of this sector is adequately resourced, coordinated, consistent with international standards and nationally owned and directed. Where this is complemented with meaningful support for capacity-building within the justice sector, the interventions of our operations have the greatest hope for contributing to sustainable improvements for justice and the rule of law.

XII. Learning lessons from the ad hoc criminal tribunals

38. In the past decade, the United Nations has established or contributed to the establishment of a wide range of special criminal tribunals. In doing so, it has sought to advance a number of objectives, among which are bringing to justice those responsible for serious violations of human rights and humanitarian law, putting an end to such violations and preventing their recurrence, securing justice and dignity for victims, establishing a record of past events, promoting national reconciliation, re-establishing the rule of law and contributing to the restoration of peace. To these ends, a variety of institutional models has emerged. These have included ad hoc international criminal tribunals established by the Security Council as subsidiary organs of the United Nations for the former Yugoslavia (International Criminal Tribunal for the Former Yugoslavia) and Rwanda (International Criminal Tribunal for Rwanda), a mixed tribunal for Sierra Leone, established as a treaty-based court; a mixed tribunal for Cambodia, proposed under a specially promulgated national law, a mixed tribunal (structured as a "court within a court") in the form of a Special Chamber in the State Court of Bosnia and Herzegovina, a Panel with Exclusive Jurisdiction over Serious Criminal Offences in Timor-Leste, authorized by promulgated regulations of the United Nations Transitional Administration in East Timor, the use of international judges and prosecutors in the courts of Kosovo, by authorization of regulations of the United Nations Interim Administration Mission in Kosovo and a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala, to be established by agreement between the United Nations and Guatemala, as an international investigative/prosecutional unit operating under the national law of Guatemala.

39. Criminal trials are important in transitional contexts. They contribute to deterrence and express public denunciation of criminal behaviour. They can provide a direct form of accountability for perpetrators and justice for victims. Criminal trials can also contribute to greater public confidence in the State's ability and willingness to enforce the law. They can help victim societies emerge from periods of conflict by establishing an official history of what happened and why, establishing detailed and well-substantiated records of incidents. They can help to delegitimize extremist elements, ensure their removal from the national political process and contribute to the restoration of civility and peace. Yet achieving and balancing the various objectives of criminal justice is less straightforward and there are a host of constraints in transitional contexts that limit the reach of criminal justice, whether related to resources, caseload or the balance of political power.

40. Of course, domestic justice systems should be the first resort in pursuit of accountability. But where domestic authorities fail to discharge their international

obligations and are unwilling or unable to prosecute violators at home, the role of the international community becomes crucial. The establishment and operation of the international and hybrid criminal tribunals of the last decade provide a forceful illustration of this point. These tribunals represent historic achievements in establishing accountability for serious violations of international human rights and humanitarian law by civilian and military leaders. They reflect a growing shift in the international community, away from a tolerance for impunity and amnesty and towards the creation of an international rule of law. Despite their limitations and imperfections, international and hybrid criminal tribunals have changed the character of international justice and enhanced the global character of the rule of law.

41. The first modern international criminal tribunals, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, have played a crucial role in advancing the cause of justice in the former Yugoslavia and in Rwanda. Indeed, in the absence of these tribunals, there would have been a massive justice deficit in the countries they served, as well as in the countries subject to the hybrid tribunals that must be recognized as progeny of the original tribunals. They have also made a global contribution by developing a rich jurisprudence in the area of international criminal law, thereby expanding and reinvigorating this key pillar of the international legal regime. As a result of their deliberations, legal efforts to hold violators to account will now benefit from greater clarity on questions of rape as a war crime and a crime against humanity, the elements of genocide, the definition of torture, the nature of individual criminal responsibility, the doctrine of command responsibility and appropriate sentencing. What is more, they have informed the development of hybrid tribunals elsewhere.

42. Of course, these gains have come with significant costs. The two ad hoc tribunals have grown into large institutions, with more than 2,000 posts between them and a combined annual budget exceeding a quarter of a billion dollars — equivalent to more than 15 per cent of the Organization's total regular budget. Although trying complex legal cases of this nature would be expensive for any legal system and the tribunals' impact and performance cannot be measured in financial numbers alone, the stark differential between cost and number of cases processed does raise important questions. Concerns regarding costs and efficiency have also emerged in cases being tried before the hybrid Tribunals. In addressing these cost-related issues, high priority should be given to consideration of the need to provide for an effective system for delivery of justice.

43. Partly in reaction to the high costs of the original tribunals, the financial mechanisms of the mixed tribunals for Sierra Leone and for Cambodia have been based entirely on voluntary contributions. While for the Extraordinary Chambers the viability of this mechanism is yet to be tested, in the case of the Special Court for Sierra Leone, my doubts about the sustainability and security of the court's operations being financed through voluntary contributions have been borne out. Less than two years into its operation, and at the very moment when trials were about to begin, the Court has confronted a serious financial crisis.[9] As such, any future financial mechanism must provide the assured and continuous source of funding that is needed to appoint officials and staff, contract services, purchase equipment and support investigations, prosecutions and trials and do so expeditiously. Resort, therefore, to assessed contributions remains necessary in these cases. The operation of judicial bodies cannot be left entirely to the vagaries of voluntary financing.

44. The location of the Yugoslavia and Rwanda tribunals outside the countries where the crimes were committed has allowed them to benefit from more adequate operational facilities and has helped protect their security and independence. However, if security and independence are adequately maintained, there are a number of important benefits to locating tribunals inside the countries concerned, including easier interaction with the local population, closer proximity to the evidence and witnesses and being more accessible to victims. Such accessibility allows victims and their families to witness the processes in which their former tormentors are brought to account. National location also enhances the national capacity-building contribution of the ad hoc tribunals, allowing them to bequeath their physical infrastructure (including buildings, equipment and furniture) to national justice systems, and to build the skills of national justice personnel. In the nationally located tribunals, international personnel work side by side with their national counterparts and on-the-job training can be provided to national lawyers, officials and staff. Such benefits, where combined with specially tailored measures for keeping the public informed and effective techniques for capacity-building, can help ensure a lasting legacy in the countries concerned.

45. Lessons have been learned about the timeliness of trials, as well. As a consequence of significant trial delays experienced early on, owing in part to the exceptionally complex factual and legal issues that the tribunals are called upon to resolve, the rules of procedure of the two ad hoc international tribunals have undergone numerous revisions aimed at reducing delays. Indeed, these sui generis tribunals have shown themselves to be learning institutions, instituting a number of important reforms and strengthening their operations considerably in recent years.

46. In the end, in post-conflict countries, the vast majority of perpetrators of serious violations of human rights and international humanitarian law will never be tried, whether internationally or domestically. As such, prosecutorial policy must be strategic, based on clear criteria, and take account of the social context, such as the need to limit the culpability of lesser offenders and support their reform and reintegration, especially children implicated in crimes, as was the case of the Special Court in Sierra Leone, where children were deemed unlikely to bear the greatest responsibility in committing serious crimes. Public expectations must be informed through an effective communications strategy. Programmes must be in place to protect and support victims of gender and sexually based violence and to protect witnesses. And it is essential that, from the moment any future international or hybrid tribunal is established, consideration be given, as a priority, to the ultimate exit strategy and intended legacy in the country concerned.

47. Moreover, other transitional justice mechanisms, such as those discussed elsewhere in the present report, may need to be put in place in order to overcome the inherent limitations of criminal justice processes — to do the things that courts do not do or do not do well — in particular to help satisfy the natural need of victims' relatives to trace their loved ones and clarify their fate; to ensure that victims and their relatives are able to obtain redress for the harm they have suffered; to meet the need for a full, comprehensive historical record of what happened during the period of conflict and why; to promote national reconciliation and encourage the emergence of moderate forces; and to ensure the removal from the justice and security sectors of those who may have connived in the violation of human rights or aided and abetted repression.

48. Finally, efforts to hold violators to legal account for past abuses have not been limited to the courts of countries in which violations take place or international tribunals alone. Recent years have seen an unprecedented number of cases brought in the national courts of third-party States, under the universality principle, a previously little used element of international law that holds that some crimes are so grave that all countries have an interest in prosecuting them. Such universal jurisdiction has been invoked in cases relating to past abuses committed in all regions, with varying levels of success. To be sure, this exceptional form of jurisdiction is rightly reserved for the prosecution of only the most serious crimes and only in cases where the justice system of the country that was home to the violations is unable or unwilling to do so. What is more, its use raises complex legal, political and diplomatic questions. Nevertheless, it is a principle rooted in international law and codified in United Nations instruments and stands as a potentially important reserve tool in the international community's struggle against impunity. As such, the last decade's experiments with universal jurisdiction are worthy of careful review and consideration, in order that we might find ways to strengthen and preserve this important principle of justice and accountability.

XIII. Supporting the role of the International Criminal Court

49. Undoubtedly, the most significant recent development in the international community's long struggle to advance the cause of justice and rule of law was the establishment of the International Criminal Court. The Rome Statute entered into force only on 1 July 2002, yet the Court is already having an important impact by putting would-be violators on notice that impunity is not assured and serving as a catalyst for enacting national laws against the gravest international crimes. Already, some 94 countries have ratified the Rome Statute. It is now crucial that the international community ensures that this nascent institution has the resources, capacities, information and support it needs to investigate, prosecute and bring to trial those who bear the greatest responsibility for war crimes, crimes against humanity and genocide, in situations where national authorities are unable or unwilling to do so. The Security Council has a particular role to play in this regard, empowered as it is to refer situations to the International Criminal Court, even in cases where the countries concerned are not States parties to the Statute of the Court. At the same time, I remain convinced that all States Members of the United Nations that have not yet done so should move towards the ratification of the Rome Statute at the earliest possible opportunity.

XIV. Facilitating truth telling

50. Another important mechanism for addressing past human rights abuses is the truth commission. Truth commissions are official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years. These bodies take a victim-centred approach and conclude their work with a final report of findings of fact and recommendations. More than 30 such truth commissions have already been established, including those of Argentina, Chile, South Africa, Peru, Ghana, Morocco, El Salvador, Guatemala, Timor-Leste and Sierra Leone. The Commissions of El Salvador, Guatemala, Timor-Leste and Sierra Leone have seen significant United Nations involvement and

support and United Nations missions in Liberia and the Democratic Republic of the Congo are now engaged in supporting consultative processes for truth commissions in those countries. Truth commissions have the potential to be of great benefit in helping post-conflict societies establish the facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and recommend reparations and institutional reforms. They can also provide a public platform for victims to address the nation directly with their personal stories and can facilitate public debate about how to come to terms with the past.

51. Factors that can limit these potential benefits include a weak civil society, political instability, victim and witness fears about testifying, a weak or corrupt justice system, insufficient time to carry out investigations, lack of public support and inadequate funding. Truth commissions are invariably compromised if appointed through a rushed or politicized process. They are best formed through consultative processes that incorporate public views on their mandates and on commissioner selection. To be successful, they must enjoy meaningful independence and have credible commissioner selection criteria and processes. Strong public information and communication strategies are essential to manage public and victim expectations and to advance credibility and transparency. Their gender sensitivity and responsiveness to victims and to victims of discrimination must be assured. Finally, many such commissions will require strong international support to function, as well as respect by international partners for their operational independence.

XV. Vetting the public service

52. Vetting the public service to screen out individuals associated with past abuses is another important component of transitional justice for which the assistance of the United Nations has frequently been sought. Vetting processes help to facilitate a stable rule of law in post-conflict countries. In Bosnia and Herzegovina, Kosovo, Timor-Leste, Liberia and now in Haiti, our operations have been called upon to support vetting processes in various ways. We have helped, variously, to develop professional standards, set up oversight mechanisms and identify objective and lawful criteria. Vetting usually entails a formal process for the identification and removal of individuals responsible for abuses, especially from police, prison services, the army and the judiciary. Parties under investigation are notified of the allegations against them and given an opportunity to respond before a body administering the vetting process. Those charged are usually entitled to reasonable notice of the case against them, the right to contest the case and the right to appeal an adverse decision to a court or other independent body. The inclusion of such due process elements distinguishes formal vetting processes from the wholesale purges practiced in some countries, involving wide-scale dismissal and disqualification based not on individual records, but rather on party affiliation, political opinion, or association with a prior State institution.

53. We have learned many lessons through our work in these areas. First, whether established as administrative or quasi-judicial bodies, legitimate vetting mechanisms should function in a manner respectful both of the sensitivities of victims and of the human rights of those suspected of abuses. Secondly, civil society should be consulted early and the public must be kept informed. Thirdly, vetting processes should include attention to the technical skills, objective qualifications and integrity

of candidates. Fourthly, procedural protections should be afforded to all those subject to vetting processes, whether current employees or new applicants. Finally, where such mechanisms exist and are seen to function fairly, effectively and in accordance with international human rights standards, they can play an important role in enhancing the legitimacy of official structures, restoring the confidence of the public and building the rule of law. They are therefore worthy of international technical and financial support, where required.

XVI. Delivering reparations

54. The United Nations has also been seized of the question of reparations for victims. In the wake of the first Gulf War, the United Nations Compensation Commission processed more than 2.5 million claims, paying out more than $18 billion to victims of Iraq's unlawful invasion and occupation of Kuwait. In the Commission on Human Rights, a process is under way to develop "basic principles and guidelines on the right to a remedy and reparation for victims of international human rights and humanitarian law". And in peace operations across the globe, United Nations personnel are helping States to develop reparations programmes for common post-conflict challenges, such as the loss of property by displaced persons and refugees. Indeed, in the face of widespread human rights violations, States have the obligation to act not only against perpetrators, but also on behalf of victims — including through the provision of reparations. Programmes to provide reparations to victims for harm suffered can be effective and expeditious complements to the contributions of tribunals and truth commissions, by providing concrete remedies, promoting reconciliation and restoring victims' confidence in the State. Reparations sometimes include non-monetary elements, such as the restitution of victims' legal rights, programmes of rehabilitation for victims and symbolic measures, such as official apologies, monuments and commemorative ceremonies. The restoration of property rights, or just compensation where this cannot be done, is another common aspect of reparations in post-conflict countries. Material forms of reparation present perhaps the greatest challenges, especially when administered through mass government programmes. Difficult questions include who is included among the victims to be compensated, how much compensation is to be rewarded, what kinds of harm are to be covered, how harm is to be quantified, how different kinds of harm are to be compared and compensated and how compensation is to be distributed.

55. No single form of reparation is likely to be satisfactory to victims. Instead, appropriately conceived combinations of reparation measures will usually be required, as a complement to the proceedings of criminal tribunals and truth commissions. Whatever mode of transitional justice is adopted and however reparations programmes are conceived to accompany them, both the demands of justice and the dictates of peace require that something be done to compensate victims. Indeed, the judges of the tribunals for Yugoslavia and Rwanda have themselves recognized this and have suggested that the United Nations consider creating a special mechanism for reparations that would function alongside the tribunals.[10]

XVII. Coordinating our efforts

56. Transitional justice and the rule of law represent broad substantive areas that have been the focus of attention by the United Nations for decades.[11] Outside the United Nations, an even greater number of actors are engaged in this work. In such circumstances, effective coordination is especially important.

57. Thus, in 2002, the United Nations Executive Committee on Peace and Security approved the final report of a system-wide, ad hoc Task Force to consider the Organization's approaches to justice and the rule of law in peace operations.[12] The Task Force identified a significant range and depth of rule of law resources and expertise available within the United Nations system,[13] as well as some gaps.[14] It provided recommendations on how we could best draw upon these resources and the resources of outside entities to better address rule of law issues through our peace operations. The report of the Task Force is a useful catalogue of resources available within the system and is already proving valuable for the coordination of our efforts. As a follow-up, a Rule of Law Focal Point Network has been established at Headquarters, comprised of specialists representing 11 departments and agencies, to facilitate coordination on rule of law issues and to strengthen our support to rule of law aspects of peace operations. Much more remains to be done. We need additional tools and mechanisms to promote gender justice. There is still no common database of the instruments, tools, experiences and best practices accumulated by the system and no web-based means to access them from the field. Developing such capacities will be a focus of our activities for the future. This year, we will issue a number of new rule of law policy tools and will convene technical meetings to collect and analyse relevant experiences, including a technical workshop on transitional justice experiences this fall. Preparation is under way for tools relating to justice sector mapping, transitional criminal codes, basic policy approaches to hybrid and domestic prosecution for serious violations, guidance on approaches to the creation of truth commissions, legal system monitoring methodologies, a review of reconciliation approaches and guidance on public sector vetting. Finally, planning has begun for the creation of a transitional justice web resource.

58. While our peace missions are sometimes called upon to play this role, coordination within the broader international community, including among bilateral and multilateral donors, aid agencies, non-governmental organizations, private foundations and the United Nations is equally vital, yet remains a largely unresolved challenge. Inadequate coordination in this sector leads to duplication, waste, gaps in assistance and conflicting aid and programme objectives. Worse yet, the uncoordinated intervention of the international community can have the effect of distorting domestic justice agendas, wastefully diverting the valuable time of domestic justice sector actors and consuming precious development resources.

59. To remedy these problems, it is crucial that donors, peace missions and the United Nations system commit themselves to working jointly with each other in a collective effort led by key actors of the civil society and Government concerned. Mere information sharing is not enough. Rather, all partners should work through a common national assessment of needs, capacities and aspirations and a common national programme of transitional justice, justice reform and rule of law development.

XVIII. Building our roster of experts

60. Through the years, specialized United Nations staff have acquired significant expertise and experience in assisting post-conflict countries to establish transitional justice processes, restore shattered justice systems and rebuild the rule of law. Given the large (and growing) demand in this area, however, their numbers are not adequate for the task at hand. As such, we are increasingly drawing on external expertise to supplement the work of our expert staff. However, finding and deploying such personnel expeditiously presents a number of difficulties.

61. The first challenge is the lack of experts who combine the complementary skills required to do this work on behalf of the United Nations. Nor are there adequate cadres of civilian police, judges, prosecutors, lawyers, prison officials and so on. To be sure, there are plenty of persons who are expert in the workings of their own legal system, their own legislation and their own language. Such expertise is, however, of limited value to our activities. What is required is a mix of expertise that includes knowledge of United Nations norms and standards for the administration of justice, experience in post-conflict settings, an understanding of the host country's legal system (inter alia, common law, civil law, Islamic law), familiarity with the host-country culture, an approach that is inclusive of local counterparts, an ability to work in the language of the host country and familiarity with a variety of legal areas.

62. There is thus a clear need to develop a reliable international roster of individuals and institutions (including outside partners) reflecting the requirements and criteria above, in order to facilitate both efficient identification, screening, recruitment, pre-deployment training and deployment of high-quality personnel, as well as the agreement of effective institutional partnerships for our work in these fields. In doing so, we could draw from the various rosters developed and maintained by many of our partners, while maintaining our own screening and selection processes.

63. Once qualified personnel are identified, the next step is to ensure that they benefit from serious and systematic pre-deployment training, with core subjects ranging from the systems and traditions of the host country to the operations of the mission, to the norms and standards to be applied and to the standard of conduct expected of them. The United Nations has developed a number of training programmes and materials for rule of law experts in various fields. Other international organizations and institutions in a number of Member States have done the same. More systematically coordinated efforts in this area would greatly assist our ability to identify, train and rapidly deploy qualified personnel to support justice and the rule of law in post-conflict countries.

XIX. Moving forward: conclusions and recommendations

A. Considerations for negotiations, peace agreements and Security Council mandates

64. Ensure that peace agreements and Security Council resolutions and mandates:

(a) Give priority attention to the restoration of and respect for the rule of law, explicitly mandating support for the rule of law and for transitional justice, particularly where United Nations support for judicial and prosecutorial processes is required;

(b) Respect, incorporate by reference and apply international standards for fairness, due process and human rights in the administration of justice;

(c) Reject any endorsement of amnesty for genocide, war crimes, or crimes against humanity, including those relating to ethnic, gender and sexually based international crimes, ensure that no such amnesty previously granted is a bar to prosecution before any United Nations-created or assisted court;

(d) Ensure that the United Nations does not establish or directly participate in any tribunal for which capital punishment is included among possible sanctions;

(e) Require that all judicial processes, courts and prosecutions be credible, fair, consistent with established international standards for the independence and impartiality of the judiciary, the effectiveness, impartiality and fairness of prosecutors and the integrity of the judicial process;

(f) Recognize and respect the rights of both victims and accused persons, in accordance with international standards, with particular attention to groups most affected by conflict and a breakdown of the rule of law, among them children, women, minorities, prisoners and displaced persons, and ensure that proceedings for the redress of grievances include specific measures for their participation and protection;

(g) Recognize the differential impact of conflict and rule of law deficits on women and children and the need to ensure gender sensitivity in restoration of rule of law and transitional justice, as well as the need to ensure the full participation of women;

(h) Avoid the imposition of externally imposed models and mandate and fund national needs assessment and national consultation processes, with the meaningful participation of Government, civil society and key national constituencies to determine the course of transitional justice and restoration of the rule of law;

(i) Where mixed tribunals are envisaged for divided societies and in the absence of clear guarantees regarding the real and perceived objectivity, impartiality and fairness of the national judiciary, consider mandating a majority of international judges, taking account of the views of various national groups, in order to enhance the credibility and perceived fairness of such tribunals among all groups in society;

(j) Insist upon full governmental cooperation with international and mixed tribunals, including in the surrender of accused persons upon request;

(k) Adopt an integrated and comprehensive approach to the rule of law and transitional justice, including proper sequencing and timing for implementation of peace processes, transitional justice processes, electoral processes and other transitional processes;

(l) Ensure the provision of adequate resources for the restoration of the rule of law and the establishment of transitional justice, including a viable and sustainable funding mechanism. Where United Nations-sponsored tribunals are to be

established, this should include at least partial funding through assessed contributions;

(m) Consider the establishment of national human rights commissions as part of transitional arrangements.

B. Considerations for the United Nations system

65. I intend to instruct the Executive Committee on Peace and Security, building on the earlier work of its task forces, to propose concrete action on the matters discussed in the present report, for the purpose of strengthening United Nations support for transitional justice and the rule of law in conflict and post-conflict countries and to give consideration, inter alia, to:

(a) Making proposals for enhancing United Nations-system arrangements for supporting the rule of law and transitional justice in conflict and post-conflict societies;

(b) Ensuring that rule of law and transitional justice considerations are integrated into our strategic and operational planning of peace operations;

(c) Updating the current list of United Nations guidelines, manuals and tools on rule of law topics and supplementing those materials as needed;

(d) Proposing new or enhanced United Nations system mechanisms, including common databases and common web-based resources, for the collection and development of best practices, documentation, manuals, handbooks, guidelines and other tools for transitional justice and for justice sector development;

(e) Reviewing best practices and developing proposals for workable national-level rule of law coordination mechanisms involving justice sector institutions, civil society, donors and the United Nations system;

(f) Developing approaches for ensuring that all programmes and policies supporting constitutional, judicial and legislative reform promote gender equality;

(g) Convening technical-level workshops on the rule of law and on transitional justice experiences from around the world;

(h) Establishing arrangements for creating and maintaining an up-to-date roster/database of justice and transitional justice experts, based upon explicit criteria, reflecting geographic, linguistic, gender and technical diversity, and organized according to particular areas of expertise;

(i) Organizing interdepartmental staff-training programmes on the rule of law and on transitional justice;

(j) Ensuring systematic debriefing of personnel involved in rule of law and transitional justice operations.

Notes

[1] S/PV.4833.

[2] S/PV.4835.

[3] S/PRST/2003/15.

[4] S/PRST/2004/2.

[5] In response to a request from the Chairman of the Committee of 34, the Under-Secretary-General for Peacekeeping Operations sent a letter to all Member States on 25 November 2002, in which information was provided on both the available United Nations expertise and resources available as well as the gaps in this field.

[6] Already in 1948, the Universal Declaration of Human Rights affirmed that recognition of inherent dignity and of equal and inalienable rights is the foundation of freedom, justice and peace. Similarly, the International Covenant on Civil and Political Rights, ratified by 151 States, requires that, even during a state of emergency, the principles of legality and the rule of law must be upheld. In the administration of justice, the Covenant requires equality before the law, fair and public hearings, the presumption of innocence and certain minimum procedural guarantees. Countless United Nations treaties, declarations, guidelines and bodies of principles have been adopted by the Organization to define with particularity the international communities' obligations with regard to justice and the rule of law.

[7] The International Covenant on Civil and Political Rights, for example, obliges its States parties to "respect and to ensure ... the rights recognized" in the Covenant and to "take the necessary steps ... to give effect to the rights ...", including by ensuring an effective remedy for violations and by providing for determination of claims by competent judicial, administrative or legislative authorities, and to enforce such remedies when granted (art. 2). The rule of law loathes arbitrariness in the exercise of authority. The Covenant thus explicitly prohibits arbitrariness in the deprivation of life (art. 6), arrest and detention (art. 9), exclusion from one's own country (art. 12) and interference with privacy, family, home or correspondence (art. 17). The Covenant further guarantees fair and lawful process for arrest and detention (art. 9), imprisonment (art. 10), deportation (art. 13) and fair trial (art. 14). Importantly, article 26 recognizes all persons as equal before the law and entitles them to equal protection of the law without discrimination. Similarly, in ratifying the International Covenant on Economic, Social and Cultural Rights, States parties have undertaken to "take steps ... with a view to achieving progressively the full realization of the rights recognized ... by all appropriate means ..." (art. 2). To be sure, the rule of law is as vital to the protection of economic and social rights as it is to civil and political rights. For a legal system to ensure justice and the protection of the rule of law to all, it must incorporate these fundamental norms and standards.

[8] See A/55/305-S/2000/809.

[9] My request for a subvention to the Special Court was approved in the amount of $16.7 million, on the understanding that any regular budget funds appropriated for the Court would be refunded to the United Nations at the time of liquidation of the Court, should sufficient voluntary contributions be received.

[10] See S/2000/1063 and S/2000/1198.

[11] The matter has been on the agenda of the General Assembly since 1993 under the agenda item "Strengthening the rule of law". In the United Nations Millennium Declaration, heads of State and Government recognized a collective responsibility to spare no effort to strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms.

[12] See "Final Report of the Executive Committee on Peace and Security Task Force for Development of Comprehensive Rule of Law Strategies for Peace Operations" of 15 August 2002, approved by the Executive Committee on 30 September 2002. In response to a request from the Chairman of the Committee of 34, the Under-Secretary-General for Peacekeeping Operations provided a copy of the report to all Member States on 25 November 2002.

[13] Ibid., annex B.

[14] Ibid., annex C.

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The rule of law and transitional justice in conflict and post-conflict societies

Report of the Secretary-General

Summary

Recent years have seen an increased focus by the United Nations on questions of transitional justice and the rule of law in conflict and post-conflict societies, yielding important lessons for our future activities. Success will depend on a number of critical factors, among them the need to ensure a common basis in international norms and standards and to mobilize the necessary resources for a sustainable investment in justice. We must learn as well to eschew one-size-fits-all formulas and the importation of foreign models, and, instead, base our support on national assessments, national participation and national needs and aspirations. Effective strategies will seek to support both technical capacity for reform and political will for reform. The United Nations must therefore support domestic reform constituencies, help build the capacity of national justice sector institutions, facilitate national consultations on justice reform and transitional justice and help fill the rule of law vacuum evident in so many post-conflict societies.

Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives. Advancing all three in fragile post-conflict settings requires strategic planning, careful integration and sensible sequencing of activities. Approaches focusing only on one or another institution, or ignoring civil society or victims, will not be effective. Our approach to the justice sector must be comprehensive in its attention to all of its interdependent institutions, sensitive to the needs of key groups and mindful of the need for complementarity between transitional justice mechanisms. Our main role is not to build international substitutes for national structures, but to help build domestic justice capacities.

In some cases, international or mixed tribunals have been established to address past crimes in war-torn societies. These tribunals have helped bring justice and hope to victims, combat the impunity of perpetrators and enrich the jurisprudence of international criminal law. They have, however, been expensive and have contributed

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little to sustainable national capacities for justice administration. The International Criminal Court offers new hope for a permanent reduction in the phenomenon of impunity and the further ratification of its statute is thus to be encouraged.

But while tribunals are important, our experience with truth commissions also shows them to be a potentially valuable complementary tool in the quest for justice and reconciliation, taking as they do a victim-centred approach and helping to establish a historical record and recommend remedial action. Similarly, our support for vetting processes has shown them to be a vital element of transitional justice and, where they respect the rights of both victims and the accused, key to restoring public trust in national institutions of governance. Victims also benefit from well-conceived reparations programmes, which themselves help ensure that justice focuses not only on perpetrators, but also on those who have suffered at their hands. Strengthening United Nations support in all these areas will require efforts to enhance coordination among all actors, develop our expert rosters and technical tools and more systematically record, analyse and apply these lessons in Security Council mandates, peace processes and the operations of United Nations peace missions.

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I. Introduction

1. On 24 September 2003, the Security Council met at the ministerial level to discuss the United Nations role in establishing justice and the rule of law in post-conflict societies.[1] In an open meeting on 30 September 2003, Member States were invited to contribute to this process.[2] In a statement issued at the conclusion of the 24 September meeting,[3] the President, on behalf of the Security Council, noted the wealth of relevant expertise and experience within the United Nations system and highlighted the need to harness and direct this expertise and experience so that the lessons and experience of the past could be learned and built upon. The Council welcomed my offer to provide a report that could inform the Security Council's further consideration of these matters. At its 26 January 2004 meeting on "Post-conflict national reconciliation: the role of the United Nations", the Security Council invited me to give, in the present report, consideration to the views expressed in that debate.[4] The present report is submitted in compliance with those requests.

II. Strengthening the rule of law and transitional justice in the wake of conflict

2. The objective of the present report is to highlight key issues and lessons learned from the Organization's experiences in the promotion of justice and the rule of law in conflict and post-conflict societies.[5] Our experience in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice. At the same time, the heightened vulnerability of minorities, women, children, prisoners and detainees, displaced persons, refugees and others, which is evident in all conflict and post-conflict situations, brings an element of urgency to the imperative of restoration of the rule of law.

3. And yet, helping war-torn societies re-establish the rule of law and come to terms with large-scale past abuses, all within a context marked by devastated institutions, exhausted resources, diminished security and a traumatized and divided population, is a daunting, often overwhelming, task. It requires attention to myriad deficits, among which are a lack of political will for reform, a lack of institutional independence within the justice sector, a lack of domestic technical capacity, a lack of material and financial resources, a lack of public confidence in Government, a lack of official respect for human rights and, more generally, a lack of peace and security. Over the years, the United Nations has accumulated significant expertise in addressing each of these key deficits. Departments, agencies, programmes and funds and specialists across the system have been deployed to numerous transitional, war-torn and post-conflict countries to assist in the complex but vital work of rule of law reform and development.

4. Of course, in matters of justice and the rule of law, an ounce of prevention is worth significantly more than a pound of cure. While United Nations efforts have been tailored so that they are palpable to the population to meet the immediacy of their security needs and to address the grave injustices of war, the root causes of conflict have often been left unaddressed. Yet, it is in addressing the causes of

conflict, through legitimate and just ways, that the international community can help prevent a return to conflict in the future. Peace and stability can only prevail if the population perceives that politically charged issues, such as ethnic discrimination, unequal distribution of wealth and social services, abuse of power, denial of the right to property or citizenship and territorial disputes between States, can be addressed in a legitimate and fair manner. Viewed this way, prevention is the first imperative of justice.

III. Articulating a common language of justice for the United Nations

5. Concepts such as "justice", "the rule of law" and "transitional justice" are essential to understanding the international community's efforts to enhance human rights, protect persons from fear and want, address property disputes, encourage economic development, promote accountable governance and peacefully resolve conflict. They serve both to define our goals and to determine our methods. Yet, there is a multiplicity of definitions and understandings of such concepts, even among our closest partners in the field. At an operational level, there is, for some, a fair amount of overlap with other related concepts, such as security sector reform, judicial sector reform and governance reform. To work together effectively in this field, a common understanding of key concepts is essential.

6. The "rule of law" is a concept at the very heart of the Organization's mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

7. For the United Nations, "justice" is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant. The international community has worked to articulate collectively the substantive and procedural requirements for the administration of justice for more than half a century.

8. The notion of "transitional justice" discussed in the present report comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.

IV. Basing assistance on international norms and standards

9. The normative foundation for our work in advancing the rule of law is the Charter of the United Nations itself, together with the four pillars of the modern international legal system: international human rights law;[6] international humanitarian law; international criminal law; and international refugee law. This includes the wealth of United Nations human rights and criminal justice standards developed in the last half-century.[7] These represent universally applicable standards adopted under the auspices of the United Nations and must therefore serve as the normative basis for all United Nations activities in support of justice and the rule of law.

10. United Nations norms and standards have been developed and adopted by countries across the globe and have been accommodated by the full range of legal systems of Member States, whether based in common law, civil law, Islamic law, or other legal traditions. As such, these norms and standards bring a legitimacy that cannot be said to attach to exported national models which, all too often, reflect more the individual interests or experience of donors and assistance providers than they do the best interests or legal development needs of host countries. These standards also set the normative boundaries of United Nations engagement, such that, for example, United Nations tribunals can never allow for capital punishment, United Nations-endorsed peace agreements can never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights, and, where we are mandated to undertake executive or judicial functions, United Nations-operated facilities must scrupulously comply with international standards for human rights in the administration of justice.

V. Identifying the role of United Nations peace operations

11. Not all peace operations are mandated to address transitional justice and rule of law activities. Transitional administrations in Kosovo (United Nations Interim Administration Mission in Kosovo) and Timor-Leste (United Nations Transitional Administration in East Timor/United Nations Mission of Support in East Timor), however, have had direct responsibility for the administration of judiciaries, police and prison services. Others, including those in El Salvador (United Nations Observer Mission in El Salvador) and Guatemala (United Nations Verification Mission in Guatemala), as well as more recent operations in Côte d'Ivoire (United Nations Mission in Côte d'Ivoire/United Nations Operation in Côte d'Ivoire), Liberia (United Nations Mission in Liberia) and Haiti (United Nations Stabilization Mission in Haiti), have had important rule of law and justice components, illustrating the increased attention given by the United Nations to these questions.

12. At the Headquarters level, support for rule of law and transitional justice aspects of peace operations includes needs assessment, mission planning, selection and deployment of specialized staff and provision of guidance and support to rule of law components of missions. On the ground, our operations have worked, inter alia, to strengthen domestic law enforcement and justice institutions, facilitate national consultations on justice reform, coordinate international rule of law assistance, monitor and report on court proceedings, train national justice sector officials, support local judicial reform bodies and advise host country rule of law institutions. Our operations have helped national actors vet and select national police, judges and

prosecutors, draft new constitutions, revise legislation, inform and educate the public, develop ombudsman institutions and human rights commissions, strengthen associations of criminal defence lawyers, establish legal aid, set up legal-training institutes and build the capacity of civil society to monitor the justice sector. Peace missions have also helped host countries to address past human rights abuses by establishing tribunals, truth and reconciliation mechanisms and victim reparation programmes.

13. This range of activities would be demanding in any circumstances. The challenge is compounded by the fact that the United Nations is frequently called upon to plan the rule of law components of peace operations on extremely short notice, based on short assessment visits to the host country and with minimal human and financial resources. With limited staff devoted to rule of law and transitional justice issues, the United Nations has been stretched to address rule of law planning needs for new missions, while simultaneously providing support to rule of law activities in existing operations. Matching sufficient resources in the headquarters of relevant departments with the growing demands for rule of law support to peace operations is an issue that will require early and considered attention by the Secretariat. I intend to instruct the Executive Committee on Peace and Security to review these questions, with a mind to making proposals to Member States for the strengthening of these resources.

VI. Assessing national needs and capacities

14. In formulating recommendations for the Security Council, planning mission mandates and structures, and conceiving assistance programmes, it is imperative that both the Security Council and the United Nations system carefully consider the particular rule of law and justice needs in each host country. Accordingly, we must assess myriad factors, such as the nature of the underlying conflict, the will of the parties, any history of widespread abuse, the identification of vulnerable groups, such as minorities and displaced persons, the situation and role of women, the situation of children, rule of law implications of peace agreements and the condition and nature of the country's legal system, traditions and institutions.

15. Unfortunately, the international community has not always provided rule of law assistance that is appropriate to the country context. Too often, the emphasis has been on foreign experts, foreign models and foreign-conceived solutions to the detriment of durable improvements and sustainable capacity. Both national and international experts have a vital role to play, to be sure. But we have learned that effective and sustainable approaches begin with a thorough analysis of national needs and capacities, mobilizing to the extent possible expertise resident in the country. Increasingly, the United Nations is looking to nationally led strategies of assessment and consultation carried out with the active and meaningful participation of national stakeholders, including justice sector officials, civil society, professional associations, traditional leaders and key groups, such as women, minorities, displaced persons and refugees. In such cases, national bodies are taking the lead in carrying out diagnostics of the justice sector by mobilizing national legal professionals and are leading national consultations and assessments relating to transitional justice. In these processes, the United Nations can help facilitate meetings, provide legal and technical advice, promote the participation of women and traditionally excluded groups, support capacity-building and help mobilize

financial and material resources, while leaving process leadership and decision-making to the national stakeholders.

16. Similarly, the most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out. Local consultation enables a better understanding of the dynamics of past conflict, patterns of discrimination and types of victims. Although the international community has, at times, imposed external transitional justice solutions, a more open and consultative trend is emerging, visible in places such as Sierra Leone and Afghanistan. Although the lessons of past transitional justice efforts help inform the design of future ones, the past can only serve as a guideline. Pre-packaged solutions are ill-advised. Instead, experiences from other places should simply be used as a starting point for local debates and decisions.

VII. Supporting domestic reform constituencies

17. Ultimately, no rule of law reform, justice reconstruction, or transitional justice initiative imposed from the outside can hope to be successful or sustainable. The role of the United Nations and the international community should be solidarity, not substitution. As discussed above, it is essential that these efforts be based upon meaningful public participation involving national legal professionals, Government, women, minorities, affected groups and civil society. Countless pre-designed or imported projects, however meticulously well-reasoned and elegantly packaged, have failed the test of justice sector reform. Without public awareness and education campaigns, and public consultation initiatives, public understanding of and support for national reform efforts will not be secured. Civil society organizations, national legal associations, human rights groups and advocates of victims and the vulnerable must all be given a voice in these processes. Most importantly, our programmes must identify, support and empower domestic reform constituencies. Thus, peace operations must better assist national stakeholders to develop their own reform vision, their own agenda, their own approaches to transitional justice and their own national plans and projects. The most important role we can play is to facilitate the processes through which various stakeholders debate and outline the elements of their country's plan to address the injustices of the past and to secure sustainable justice for the future, in accordance with international standards, domestic legal traditions and national aspirations. In doing so, we must learn better how to respect and support local ownership, local leadership and a local constituency for reform, while at the same time remaining faithful to United Nations norms and standards.

18. Support for reform must be cultivated among all groups in society, including elites, ex-combatants and (non-criminal) elements of former regimes, all of whom must be reassured that they will be protected from unlawful or unfair retribution and offered a real chance at reintegration into their society. Finally, in post-conflict situations and where transitional justice processes are under consideration, a particularly important constituency is the country's victims. The United Nations must assess and respect the interests of victims in the design and operation of transitional justice measures. Victims and the organizations that advocate on their behalf deserve the greatest attention from the international community.

VIII. Recognizing the political context

19. While effective rule of law strategies necessarily focus on legal and institutional requirements, due attention must be paid to political elements as well. Re-establishing justice systems, planning rule of law reforms and agreeing on transitional justice processes are activities of the highest public interest. They are therefore necessary subjects of serious public consultation and debate and, thus, as much political questions as technical ones. Institutions receiving international assistance cannot reasonably be evaluated in terms of their enhanced efficiency alone, without regard to their commitment to human rights or the responsibility of their public discourse. In some cases, State authorities have been more concerned with consolidation of power than with strengthening the rule of law, with the latter often perceived as a threat to the former. As such, my senior representatives in the field must give dedicated attention to supporting the political aspects of justice and rule of law reforms. Their good offices can be crucial to securing political space for reformers, insulating law enforcement from political abuse and mobilizing resources for the strengthening of the justice sector.

20. And yet, the international community has frequently underestimated the extent of political will necessary to support effective rule of law reform in post-conflict States and invested inadequately in public consultations on reform questions. As a result, justice strategies and assistance programmes have sometimes neglected to facilitate consensus among important stakeholders on the nature and pace of reforms and new institutions. Here too the United Nations has a role. Just as we have supported national consultations in the form of elections and referendums, so must we support and facilitate national consultations aimed at determining the national course for transitional justice or rule of law reform.

21. Equally important is the fact that rule of law reforms and transitional justice activities often occur simultaneously with post-conflict elections, as well as with the unfolding of fragile peace processes. Careful sequencing of such processes is vital to their success and legitimacy. Justice and peace are not contradictory forces. Rather, properly pursued, they promote and sustain one another. The question, then, can never be whether to pursue justice and accountability, but rather when and how. This means recognizing that United Nations peace operations, with some notable exceptions, are planned as short-term interventions, while accounting for the past, building the rule of law and fostering democracy are long-term processes. As such, strategic planning should, from the beginning, take account of the need for phasing and for post-mission international support in these areas, including long-term development assistance.

22. A related question is the timing of electoral processes. Recent experience has demonstrated that holding elections without adequate political and security preparation and disengaging too soon can undermine, rather than facilitate, the process of building the rule of law. Yet, the international community still sometimes encourages early elections in post-conflict States in an attempt to lend legitimacy to political leaders, processes and institutions. But premature elections can bring about only cosmetic electoral democracies, at best. In many cases, elections held in non-permissive security conditions exclude the meaningful participation of key groups, while exposing people to undue personal risk. In others, candidates and parties from the old political order, lacking a commitment to democratic principles and human

rights, use premature elections to consolidate their power. At worst, they can radicalize political discourse and even lead to renewed conflict.

IX. Embracing integrated and complementary approaches

23. Our experience confirms that a piecemeal approach to the rule of law and transitional justice will not bring satisfactory results in a war-torn or atrocity-scarred nation. Effective rule of law and justice strategies must be comprehensive, engaging all institutions of the justice sector, both official and non-governmental, in the development and implementation of a single nationally owned and led strategic plan for the sector. Such strategies must include attention to the standards of justice, the laws that codify them, the institutions that implement them, the mechanisms that monitor them and the people that must have access to them.

24. These are hard-learned lessons, drawn from decades of United Nations experience on the ground. For example, international efforts have sometimes focused on re-establishing police services, while paying scant attention to other justice sector components, such as legislative work, crime prevention, judicial development, legal education, prison reform, prosecutorial capacity, victim protection and support, civil society support, citizenship and identification regulation, and property dispute resolution. Yet all of these are essential to the rule of law and all are interdependent. Neglect of one inevitably leads to the weakening of the others.

25. In other cases, the international community has rushed to prescribe a particular formula for transitional justice, emphasizing either criminal prosecutions or truth-telling, without first affording victims and national constituencies the opportunity to consider and decide on the proper balance. The international community must see transitional justice in a way that extends well beyond courts and tribunals. The challenges of post-conflict environments necessitate an approach that balances a variety of goals, including the pursuit of accountability, truth and reparation, the preservation of peace and the building of democracy and the rule of law. A comprehensive strategy should also pay special attention to abuses committed against groups most affected by conflict, such as minorities, the elderly, children, women, prisoners, displaced persons and refugees, and establish particular measures for their protection and redress in judicial and reconciliation processes. For example, protection measures for children can include provisions for hearings in camera, pre-recorded testimonies, videoconferencing and the use of pseudonyms to protect the identity of child witnesses.

26. Where transitional justice is required, strategies must be holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriately conceived combination thereof. The United Nations must consider through advance planning and consultation how different transitional justice mechanisms will interact to ensure that they do not conflict with one another. It is now generally recognized, for example, that truth commissions can positively complement criminal tribunals, as the examples of Argentina, Peru, Timor-Leste and Sierra Leone suggest. And in Timor-Leste, the Serious Crimes Unit worked in close conjunction with the Reception, Truth and Reconciliation Commission, as provided for in Regulation

No. 2001/10 of the United Nations Transitional Administration in East Timor, which established the Commission's terms of reference.

X. Filling a rule of law vacuum

27. In post-conflict settings, legislative frameworks often show the accumulated signs of neglect and political distortion, contain discriminatory elements and rarely reflect the requirements of international human rights and criminal law standards. Emergency laws and executive decrees are often the order of the day. Where adequate laws are on the books, they may be unknown to the general public and official actors may have neither the capacity nor the tools to implement them. National judicial, police and corrections systems have typically been stripped of the human, financial and material resources necessary for their proper functioning. They also often lack legitimacy, having been transformed by conflict and abuse into instruments of repression. Such situations are invariably marked by an abundance of arms, rampant gender and sexually based violence, the exploitation of children, the persecution of minorities and vulnerable groups, organized crime, smuggling, trafficking in human beings and other criminal activities. In such situations, organized criminal groups are often better resourced than local government and better armed than local law enforcement. Restoring the capacity and legitimacy of national institutions is a long-term undertaking. However, urgent action to restore human security, human rights and the rule of law cannot be deferred. Thus, United Nations peace operations are often called upon to help fill this rule of law vacuum.

28. Indeed, in some cases, we have faced the difficulties of conducting peace operations where there are no functioning criminal justice mechanisms at all. In such situations, peacekeepers have encountered wrongdoers in the midst of committing serious criminal acts of a direct threat to civilians and to the operation itself. Military components typically lack the training, skills and resources to address such situations. At the same time, civilian components of peace operations, including police, are often too slowly deployed and are seldom mandated to undertake executive functions, such as arrest. Yet such lawlessness can seriously undermine the efforts of an entire peace operation. Given these realities, we must, together with Member Sates, rethink our current strategies for addressing the rule of law vacuum into which we are often deployed, including the role, capacities and obligations of military and civilian police components.

29. In some situations, where this problem has been most acute, civilian police in peace missions have been mandated to undertake executive functions, including powers of arrest and detention. While, in most cases, United Nations civilian police provide operational support and advice and are not empowered to carry out executive functions, their responsibilities have grown ever more complex. In every case, their role is central to the restoration of the rule of law and worthy of better support and more resources. The simple presence of law enforcement officials on the streets after a conflict can substantially reduce looting, harassment, rape, robbery and murder. After some 20 years of United Nations experience, this is an area that would benefit from a serious review, in order that we might consider ways to bolster our efforts.

30. But, as discussed above, while policing interventions in post-conflict environments are a crucial component of the rule of law continuum, they must be

linked to parallel support to the other institutions and functions of the justice system. Enhancing the capacity of police (or United Nations Civilian Police) to make arrests cannot be seen as a contribution to the rule of law if there are no modern laws to be applied, no humane and properly resourced and supervised detention facilities in which to hold those arrested, no functioning judiciary to try them lawfully and expeditiously, and no defence lawyers to represent them. Progress has been made in recent years to address such lacunae, including a number of dedicated projects to develop transitional codes, guidelines and rule of law policy tools, as recommended in the report of the Panel on United Nations Peace Operations.[8] In the coming months, many of these new tools will be finalized.

31. The establishment of independent national human rights commissions is one complementary strategy that has shown promise for helping to restore the rule of law, peaceful dispute resolution and protection of vulnerable groups where the justice system is not yet fully functioning. Many have been established in conflict and post-conflict societies with mandates including quasi-judicial functions, conflict-resolution and protection programmes. Recent examples include the national human rights institutions of Afghanistan, Rwanda, Colombia, Indonesia, Nepal, Sri Lanka and Uganda, each of which is now playing an important role in this regard. Exceptional fact-finding mechanisms have also been mobilized by the United Nations with increasing frequency, such as the ad hoc international commissions of inquiry established to look into war crimes committed in places such as the former Yugoslavia, Rwanda, Burundi and Timor-Leste.

32. Additionally, strategies for expediting a return to the rule of law must be integrated with plans to reintegrate both displaced civilians and former fighters. Disarmament, demobilization and reintegration processes are one of the keys to a transition out of conflict and back to normalcy. For populations traumatized by war, those processes are among the most visible signs of the gradual return of peace and security. Similarly, displaced persons must be the subject of dedicated programmes to facilitate return. Carefully crafted amnesties can help in the return and reintegration of both groups and should be encouraged, although, as noted above, these can never be permitted to excuse genocide, war crimes, crimes against humanity or gross violations of human rights.

33. Finally, better safeguards must be established to ensure that the very interventions designed to protect vulnerable and victimized groups, including women and children, do not result in their further victimization. In such situations, women often suffer from domestic violence in the home and targeted violence in the public sphere. Addressing the all too common sexual abuse, exploitation and traumatization of these groups in conflict and post-conflict settings requires special skills, resources and mechanisms to ensure that law enforcement personnel, peacekeepers and others who interact with them do not unintentionally contribute to or exacerbate their suffering. And it is critically important that those who seek to abuse or exploit them are held accountable. Indeed, if the rule of law means anything at all, it means that no one, including peacekeepers, is above the law. For this reason, I have issued a bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13), setting out minimum standards of behaviour expected of all United Nations personnel, as well as measures necessary to prevent sexual exploitation and abuse.

XI. Developing national justice systems

34. While the international community is obliged to act directly for the protection of human rights and human security where conflict has eroded or frustrated the domestic rule of law, in the long term, no ad hoc, temporary or external measures can ever replace a functioning national justice system. Thus, for decades, a number of United Nations entities have been engaged in helping countries to strengthen national systems for the administration of justice in accordance with international standards.

35. Effective strategies for building domestic justice systems will give due attention to laws, processes (both formal and informal) and institutions (both official and non-official). Legislation that is in conformity with international human rights law and that responds to the country's current needs and realities is fundamental. At the institutional core of systems based on the rule of law is a strong judiciary, which is independent and adequately empowered, financed, equipped and trained to uphold human rights in the administration of justice. Equally important are the other institutions of the justice sector, including lawful police services, humane prison services, fair prosecutions and capable associations of criminal defence lawyers (oft-forgotten but vital institutions). Beyond the criminal law realm, such strategies must also ensure effective legal mechanisms for redressing civil claims and disputes, including property disputes, administrative law challenges, nationality and citizenship claims and other key legal issues arising in post-conflict settings. Juvenile justice systems must be put in place to ensure that children in conflict with the law are treated appropriately and in line with recognized international standards for juvenile justice. Justice sector institutions must be gender sensitive and women must be included and empowered by the reform of the sector. Legal education and training and support for the organization of the legal community, including through bar associations, are important catalysts for sustained legal development.

36. Our programmes must also support access to justice, to overcome common cultural, linguistic, economic, logistical or gender-specific impediments. Legal aid and public representation programmes are essential in this regard. Additionally, while focusing on the building of a formal justice system that functions effectively and in accordance with international standards, it is also crucial to assess means for ensuring the functioning of complementary and less formal mechanisms, particularly in the immediate term. Independent national human rights commissions can play a vital role in affording accountability, redress, dispute resolution and protection during transitional periods. Similarly, due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition. Where these are ignored or overridden, the result can be the exclusion of large sectors of society from accessible justice. Particularly in post-conflict settings, vulnerable, excluded, victimized and marginalized groups must also be engaged in the development of the sector and benefit from its emerging institutions. Measures to ensure the gender sensitivity of justice sector institutions is vital in such circumstances. With respect to children, it is also important that support be given to nascent institutions of child protection and juvenile justice, including for the development of alternatives to detention, and for the enhancement of the child protection capacities of justice sector institutions.

37. Recent national experience suggests that achieving these complex objectives is best served by the definition of a national process, guided by a national justice plan and shepherded by specially appointed independent national institutions, such as judicial or law commissions. Our support for such processes and bodies can help ensure that development of this sector is adequately resourced, coordinated, consistent with international standards and nationally owned and directed. Where this is complemented with meaningful support for capacity-building within the justice sector, the interventions of our operations have the greatest hope for contributing to sustainable improvements for justice and the rule of law.

XII. Learning lessons from the ad hoc criminal tribunals

38. In the past decade, the United Nations has established or contributed to the establishment of a wide range of special criminal tribunals. In doing so, it has sought to advance a number of objectives, among which are bringing to justice those responsible for serious violations of human rights and humanitarian law, putting an end to such violations and preventing their recurrence, securing justice and dignity for victims, establishing a record of past events, promoting national reconciliation, re-establishing the rule of law and contributing to the restoration of peace. To these ends, a variety of institutional models has emerged. These have included ad hoc international criminal tribunals established by the Security Council as subsidiary organs of the United Nations for the former Yugoslavia (International Criminal Tribunal for the Former Yugoslavia) and Rwanda (International Criminal Tribunal for Rwanda); a mixed tribunal for Sierra Leone, established as a treaty-based court; a mixed tribunal for Cambodia, proposed under a national law specially promulgated in accordance with a treaty; a mixed tribunal (structured as a "court within a court") in the form of a Special Chamber in the State Court of Bosnia and Herzegovina; a Panel with Exclusive Jurisdiction over Serious Criminal Offences in Timor-Leste, established by the United Nations Transitional Administration in East Timor; the use of international judges and prosecutors in the courts of Kosovo, pursuant to regulations of the United Nations Interim Administration Mission in Kosovo; and a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala, to be established by agreement between the United Nations and Guatemala, as an international investigative/prosecutional unit operating under the national law of Guatemala. The details of the agreement are currently under discussion.

39. Criminal trials can play an important role in transitional contexts. They express public denunciation of criminal behaviour. They can provide a direct form of accountability for perpetrators and ensure a measure of justice for victims by giving them the chance to see their former tormentors made to answer for their crimes. Insofar as relevant procedural rules enable them to present their views and concerns at trial, they can also help victims to reclaim their dignity. Criminal trials can also contribute to greater public confidence in the State's ability and willingness to enforce the law. They can also help societies to emerge from periods of conflict by establishing detailed and well-substantiated records of particular incidents and events. They can help to de-legitimize extremist elements, ensure their removal from the national political process and contribute to the restoration of civility and peace and to deterrence. Yet achieving and balancing the various objectives of criminal justice is less straightforward and there are a host of constraints in transitional

contexts that limit the reach of criminal justice, whether related to resources, caseload or the balance of political power.

40. Of course, domestic justice systems should be the first resort in pursuit of accountability. But where domestic authorities are unwilling or unable to prosecute violators at home, the role of the international community becomes crucial. The establishment and operation of the international and hybrid criminal tribunals of the last decade provide a forceful illustration of this point. These tribunals represent historic achievements in establishing accountability for serious violations of international human rights and humanitarian law by civilian and military leaders. They have proved that it is possible to deliver justice and conduct fair trials effectively at the international level, in the wake of the breakdown of national judicial systems. More significantly still, they reflect a growing shift in the international community, away from a tolerance for impunity and amnesty and towards the creation of an international rule of law. Despite their limitations and imperfections, international and hybrid criminal tribunals have changed the character of international justice and enhanced the global character of the rule of law.

41. The first modern international criminal tribunals, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, have played a crucial role in advancing the cause of justice in the former Yugoslavia and in Rwanda. Indeed, in the absence of these tribunals, there would have been a massive justice deficit in the countries they served, as well as in the countries subject to the hybrid tribunals that must be recognized as progeny of the original tribunals. They have also made a global contribution by developing a rich jurisprudence in the area of international criminal law, thereby expanding and reinvigorating this key pillar of the international legal regime. As a result of their deliberations, legal efforts to hold violators to account will now benefit from greater clarity on questions of rape as a war crime and a crime against humanity, the elements of genocide, the definition of torture, the nature of individual criminal responsibility, the doctrine of command responsibility and appropriate sentencing. What is more, they have informed the development of hybrid tribunals elsewhere.

42. Of course, these gains have come with significant costs. The two ad hoc tribunals have grown into large institutions, with more than 2,000 posts between them and a combined annual budget exceeding a quarter of a billion dollars — equivalent to more than 15 per cent of the Organization's total regular budget. Although trying complex legal cases of this nature would be expensive for any legal system and the tribunals' impact and performance cannot be measured in financial numbers alone, the stark differential between cost and number of cases processed does raise important questions. Concerns regarding costs and efficiency have also emerged in cases being tried before the hybrid Tribunals. In addressing these cost-related issues, high priority should be given to consideration of the need to provide for an effective system for delivery of justice.

43. Partly in reaction to the high costs of the original tribunals, the financial mechanisms of the mixed tribunals for Sierra Leone and for Cambodia have been based entirely on voluntary contributions. While for the Extraordinary Chambers the viability of this mechanism is yet to be tested, in the case of the Special Court for Sierra Leone, my doubts about the sustainability and security of the court's operations being financed through voluntary contributions have been borne out. Less

than two years into its operation, and at the very moment when trials were about to begin, the Court has confronted a serious financial crisis.[9] As such, any future financial mechanism must provide the assured and continuous source of funding that is needed to appoint officials and staff, contract services, purchase equipment and support investigations, prosecutions and trials and do so expeditiously. Resort, therefore, to assessed contributions remains necessary in these cases. The operation of judicial bodies cannot be left entirely to the vagaries of voluntary financing.

44. The location of the Yugoslavia and Rwanda tribunals outside the countries where the crimes were committed has allowed them to benefit from more adequate operational facilities and has helped protect their security and independence. However, if security and independence are adequately maintained, there are a number of important benefits to locating tribunals inside the countries concerned, including easier interaction with the local population, closer proximity to the evidence and witnesses and being more accessible to victims. Such accessibility allows victims and their families to witness the processes in which their former tormentors are brought to account. National location also enhances the national capacity-building contribution of the ad hoc tribunals, allowing them to bequeath their physical infrastructure (including buildings, equipment and furniture) to national justice systems, and to build the skills of national justice personnel. In the nationally located tribunals, international personnel work side by side with their national counterparts and on-the-job training can be provided to national lawyers, officials and staff. Such benefits, where combined with specially tailored measures for keeping the public informed and effective techniques for capacity-building, can help ensure a lasting legacy in the countries concerned.

45. Lessons have been learned about the timeliness of trials, as well. Many suspects before the two ad hoc tribunals have had to spend lengthy periods in detention waiting for their trials to start. With regard to the ad hoc international tribunals, many of those trials have taken a very long time to complete, due in part to the complexities of prosecuting international crimes. The rules of procedure of the two ad hoc international tribunals have undergone revisions aimed at reducing delays. It was the recommendation of my Expert Group, when it reviewed the two ad hoc tribunals in 1999, that measures be taken to reduce the length of trials and expedite their completion, and that judges should take an active role and exercise a substantial degree of control over proceedings. It is highly desirable, then, that those nominated, elected or appointed to serve as judges in international and hybrid tribunals possess extensive criminal trial experience, preferably as a judge. To facilitate this, States should put in place career structures that make it easier to release serving members of their national judiciaries for service in international courts or tribunals and that give full credit for periods of service with such institutions. Moreover, adjudicating in international criminal proceedings is an arduous and stressful task, as the high number of casual vacancies that have arisen at the two ad hoc tribunals shows. It is accordingly essential that only those who are in good health be nominated, elected or appointed to serve as judges in international or hybrid tribunals. Consideration might also usefully be given in this connection to imposing an age limit on judicial service, as is done in many national jurisdictions.

46. In the end, in post-conflict countries, the vast majority of perpetrators of *serious violations of human rights and international humanitarian law* will never be tried, whether internationally or domestically. As such, prosecutorial policy must be strategic, based on clear criteria, and take account of the social context. Public

expectations must be informed through an effective communications strategy. Programmes must be in place to protect and support victims of gender and sexually based violence and to protect witnesses. And it is essential that, from the moment any future international or hybrid tribunal is established, consideration be given, as a priority, to the ultimate exit strategy and intended legacy in the country concerned.

47. Moreover, other transitional justice mechanisms, such as those discussed elsewhere in the present report, may need to be put in place in order to overcome the inherent limitations of criminal justice processes — to do the things that courts do not do or do not do well — in particular to help satisfy the natural need of victims' relatives to trace their loved ones and clarify their fate; to ensure that victims and their relatives are able to obtain redress for the harm they have suffered; to meet the need for a full, comprehensive historical record of what happened during the period of conflict and why; to promote national reconciliation and encourage the emergence of moderate forces; and to ensure the removal from the justice and security sectors of those who may have connived in the violation of human rights or aided and abetted repression.

48. Finally, efforts to hold violators to legal account for past abuses have not been limited to the courts of countries in which violations take place or international tribunals alone. Recent years have seen an unprecedented number of cases brought in the national courts of third-party States, under the universality principle, a previously little used element of international law that holds that some crimes are so grave that all countries have an interest in prosecuting them. Such universal jurisdiction has been invoked in cases relating to past abuses committed in all regions, with varying levels of success. To be sure, this exceptional form of jurisdiction is rightly reserved for the prosecution of only the most serious crimes and only in cases where the justice system of the country that was home to the violations is unable or unwilling to do so. What is more, its use raises complex legal, political and diplomatic questions. Nevertheless, it is a principle rooted in international law and codified in United Nations instruments and stands as a potentially important reserve tool in the international community's struggle against impunity. As such, the last decade's experiments with universal jurisdiction are worthy of careful review and consideration, in order that we might find ways to strengthen and preserve this important principle of justice and accountability.

XIII. Supporting the role of the International Criminal Court

49. Undoubtedly, the most significant recent development in the international community's long struggle to advance the cause of justice and rule of law was the establishment of the International Criminal Court. The Rome Statute entered into force only on 1 July 2002, yet the Court is already having an important impact by putting would-be violators on notice that impunity is not assured and serving as a catalyst for enacting national laws against the gravest international crimes. Already, some 94 countries have ratified the Rome Statute. It is now crucial that the international community ensures that this nascent institution has the resources, capacities, information and support it needs to investigate, prosecute and bring to trial those who bear the greatest responsibility for war crimes, crimes against humanity and genocide, in situations where national authorities are unable or unwilling to do so. The Security Council has a particular role to play in this regard, empowered as it is to refer situations to the International Criminal Court, even in

cases where the countries concerned are not States parties to the Statute of the Court. At the same time, I remain convinced that all States Members of the United Nations that have not yet done so should move towards the ratification of the Rome Statute at the earliest possible opportunity.

XIV. Facilitating truth telling

50. Another important mechanism for addressing past human rights abuses is the truth commission. Truth commissions are official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years. These bodies take a victim-centred approach and conclude their work with a final report of findings of fact and recommendations. More than 30 such truth commissions have already been established, including those of Argentina, Chile, South Africa, Peru, Ghana, Morocco, El Salvador, Guatemala, Timor-Leste and Sierra Leone. The Commissions of El Salvador, Guatemala, Timor-Leste and Sierra Leone have seen significant United Nations involvement and support and United Nations missions in Liberia and the Democratic Republic of the Congo are now engaged in supporting consultative processes for truth commissions in those countries. Truth commissions have the potential to be of great benefit in helping post-conflict societies establish the facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and recommend reparations and institutional reforms. They can also provide a public platform for victims to address the nation directly with their personal stories and can facilitate public debate about how to come to terms with the past.

51. Factors that can limit these potential benefits include a weak civil society, political instability, victim and witness fears about testifying, a weak or corrupt justice system, insufficient time to carry out investigations, lack of public support and inadequate funding. Truth commissions are invariably compromised if appointed through a rushed or politicized process. They are best formed through consultative processes that incorporate public views on their mandates and on commissioner selection. To be successful, they must enjoy meaningful independence and have credible commissioner selection criteria and processes. Strong public information and communication strategies are essential to manage public and victim expectations and to advance credibility and transparency. Their gender sensitivity and responsiveness to victims and to victims of discrimination must be assured. Finally, many such commissions will require strong international support to function, as well as respect by international partners for their operational independence.

XV. Vetting the public service

52. Vetting the public service to screen out individuals associated with past abuses is another important component of transitional justice for which the assistance of the United Nations has frequently been sought. Vetting processes help to facilitate a stable rule of law in post-conflict countries. In Bosnia and Herzegovina, Kosovo, Timor-Leste, Liberia and now in Haiti, our operations have been called upon to support vetting processes in various ways. We have helped, variously, to develop professional standards, set up oversight mechanisms and identify objective and

lawful criteria. Vetting usually entails a formal process for the identification and removal of individuals responsible for abuses, especially from police, prison services, the army and the judiciary. Parties under investigation are notified of the allegations against them and given an opportunity to respond before a body administering the vetting process. Those charged are usually entitled to reasonable notice of the case against them, the right to contest the case and the right to appeal an adverse decision to a court or other independent body. The inclusion of such due process elements distinguishes formal vetting processes from the wholesale purges practiced in some countries, involving wide-scale dismissal and disqualification based not on individual records, but rather on party affiliation, political opinion, or association with a prior State institution.

53. We have learned many lessons through our work in these areas. First, whether established as administrative or quasi-judicial bodies, legitimate vetting mechanisms should function in a manner respectful both of the sensitivities of victims and of the human rights of those suspected of abuses. Secondly, civil society should be consulted early and the public must be kept informed. Thirdly, vetting processes should include attention to the technical skills, objective qualifications and integrity of candidates. Fourthly, procedural protections should be afforded to all those subject to vetting processes, whether current employees or new applicants. Finally, where such mechanisms exist and are seen to function fairly, effectively and in accordance with international human rights standards, they can play an important role in enhancing the legitimacy of official structures, restoring the confidence of the public and building the rule of law. They are therefore worthy of international technical and financial support, where required.

XVI. Delivering reparations

54. The United Nations has also been seized of the question of reparations for victims. In the wake of the first Gulf War, the United Nations Compensation Commission processed more than 2.5 million claims, paying out more than $18 billion to victims of Iraq's unlawful invasion and occupation of Kuwait. In the Commission on Human Rights, a process is under way to develop "basic principles and guidelines on the right to a remedy and reparation for victims of international human rights and humanitarian law". And in peace operations across the globe, United Nations personnel are helping States to develop reparations programmes for common post-conflict challenges, such as the loss of property by displaced persons and refugees. Indeed, in the face of widespread human rights violations, States have the obligation to act not only against perpetrators, but also on behalf of victims — including through the provision of reparations. Programmes to provide reparations to victims for harm suffered can be effective and expeditious complements to the contributions of tribunals and truth commissions, by providing concrete remedies, promoting reconciliation and restoring victims' confidence in the State. Reparations sometimes include non-monetary elements, such as the restitution of victims' legal rights, programmes of rehabilitation for victims and symbolic measures, such as official apologies, monuments and commemorative ceremonies. The restoration of property rights, or just compensation where this cannot be done, is another common aspect of reparations in post-conflict countries. Material forms of reparation present perhaps the greatest challenges, especially when administered through mass government programmes. Difficult questions include who is included among the

victims to be compensated, how much compensation is to be rewarded, what kinds of harm are to be covered, how harm is to be quantified, how different kinds of harm are to be compared and compensated and how compensation is to be distributed.

55. No single form of reparation is likely to be satisfactory to victims. Instead, appropriately conceived combinations of reparation measures will usually be required, as a complement to the proceedings of criminal tribunals and truth commissions. Whatever mode of transitional justice is adopted and however reparations programmes are conceived to accompany them, both the demands of justice and the dictates of peace require that something be done to compensate victims. Indeed, the judges of the tribunals for Yugoslavia and Rwanda have themselves recognized this and have suggested that the United Nations consider creating a special mechanism for reparations that would function alongside the tribunals.[10]

XVII. Coordinating our efforts

56. Transitional justice and the rule of law represent broad substantive areas that have been the focus of attention by the United Nations for decades.[11] Outside the United Nations, an even greater number of actors are engaged in this work. In such circumstances, effective coordination is especially important.

57. Thus, in 2002, the United Nations Executive Committee on Peace and Security approved the final report of a system-wide, ad hoc Task Force to consider the Organization's approaches to justice and the rule of law in peace operations.[12] The Task Force identified a significant range and depth of rule of law resources and expertise available within the United Nations system,[13] as well as some gaps.[14] It provided recommendations on how we could best draw upon these resources and the resources of outside entities to better address rule of law issues through our peace operations. The report of the Task Force is a useful catalogue of resources available within the system and is already proving valuable for the coordination of our efforts. As a follow-up, a Rule of Law Focal Point Network has been established at Headquarters, comprised of specialists representing 11 departments and agencies, to facilitate coordination on rule of law issues and to strengthen our support to rule of law aspects of peace operations. Much more remains to be done. We need additional tools and mechanisms to promote gender justice. There is still no common database of the instruments, tools, experiences and best practices accumulated by the system and no web-based means to access them from the field. Developing such capacities will be a focus of our activities for the future. This year, we will issue a number of new rule of law policy tools and will convene technical meetings to collect and analyse relevant experiences, including a technical workshop on transitional justice experiences this fall. Preparation is under way for tools relating to justice sector mapping, transitional criminal codes, basic policy approaches to hybrid and domestic prosecution for serious violations, guidance on approaches to the creation of truth commissions, legal system monitoring methodologies, a review of reconciliation approaches and guidance on public sector vetting. Finally, planning has begun for the creation of a transitional justice web resource.

58. While our peace missions are sometimes called upon to play this role, coordination within the broader international community, including among bilateral and multilateral donors, aid agencies, non-governmental organizations, private

foundations and the United Nations is equally vital, yet remains a largely unresolved challenge. Inadequate coordination in this sector leads to duplication, waste, gaps in assistance and conflicting aid and programme objectives. Worse yet, the uncoordinated intervention of the international community can have the effect of distorting domestic justice agendas, wastefully diverting the valuable time of domestic justice sector actors and consuming precious development resources.

59. To remedy these problems, it is crucial that donors, peace missions and the United Nations system commit themselves to working jointly with each other in a collective effort led by key actors of the civil society and Government concerned. Mere information sharing is not enough. Rather, all partners should work through a common national assessment of needs, capacities and aspirations and a common national programme of transitional justice, justice reform and rule of law development.

XVIII. Building our roster of experts

60. Through the years, specialized United Nations staff have acquired significant expertise and experience in assisting post-conflict countries to establish transitional justice processes, restore shattered justice systems and rebuild the rule of law. Given the large (and growing) demand in this area, however, their numbers are not adequate for the task at hand. As such, we are increasingly drawing on external expertise to supplement the work of our expert staff. However, finding and deploying such personnel expeditiously presents a number of difficulties.

61. The first challenge is the lack of experts who combine the complementary skills required to do this work on behalf of the United Nations. Nor are there adequate cadres of civilian police, judges, prosecutors, lawyers, prison officials and so on. To be sure, there are plenty of persons who are expert in the workings of their own legal system, their own legislation and their own language. Such expertise is, however, of limited value to our activities. What is required is a mix of expertise that includes knowledge of United Nations norms and standards for the administration of justice, experience in post-conflict settings, an understanding of the host country's legal system (inter alia, common law, civil law, Islamic law), familiarity with the host-country culture, an approach that is inclusive of local counterparts, an ability to work in the language of the host country and familiarity with a variety of legal areas.

62. There is thus a clear need to develop a reliable international roster of individuals and institutions (including outside partners) reflecting the requirements and criteria above, in order to facilitate both efficient identification, screening, recruitment, pre-deployment training and deployment of high-quality personnel, as well as the agreement of effective institutional partnerships for our work in these fields. In doing so, we could draw from the various rosters developed and maintained by many of our partners, while maintaining our own screening and selection processes.

63. Once qualified personnel are identified, the next step is to ensure that they benefit from serious and systematic pre-deployment training, with core subjects ranging from the systems and traditions of the host country to the operations of the mission, to the norms and standards to be applied and to the standard of conduct expected of them. The United Nations has developed a number of training

programmes and materials for rule of law experts in various fields. Other international organizations and institutions in a number of Member States have done the same. More systematically coordinated efforts in this area would greatly assist our ability to identify, train and rapidly deploy qualified personnel to support justice and the rule of law in post-conflict countries.

XIX. Moving forward: conclusions and recommendations

A. Considerations for negotiations, peace agreements and Security Council mandates

64. Ensure that peace agreements and Security Council resolutions and mandates:

(a) Give priority attention to the restoration of and respect for the rule of law, explicitly mandating support for the rule of law and for transitional justice, particularly where United Nations support for judicial and prosecutorial processes is required;

(b) Respect, incorporate by reference and apply international standards for fairness, due process and human rights in the administration of justice;

(c) Reject any endorsement of amnesty for genocide, war crimes, or crimes against humanity, including those relating to ethnic, gender and sexually based international crimes, ensure that no such amnesty previously granted is a bar to prosecution before any United Nations-created or assisted court;

(d) Ensure that the United Nations does not establish or directly participate in any tribunal for which capital punishment is included among possible sanctions;

(e) Require that all judicial processes, courts and prosecutions be credible, fair, consistent with established international standards for the independence and impartiality of the judiciary, the effectiveness, impartiality and fairness of prosecutors and the integrity of the judicial process;

(f) Recognize and respect the rights of both victims and accused persons, in accordance with international standards, with particular attention to groups most affected by conflict and a breakdown of the rule of law, among them children, women, minorities, prisoners and displaced persons, and ensure that proceedings for the redress of grievances include specific measures for their participation and protection;

(g) Recognize the differential impact of conflict and rule of law deficits on women and children and the need to ensure gender sensitivity in restoration of rule of law and transitional justice, as well as the need to ensure the full participation of women;

(h) Avoid the imposition of externally imposed models and mandate and fund national needs assessment and national consultation processes, with the meaningful participation of Government, civil society and key national constituencies to determine the course of transitional justice and restoration of the rule of law;

(i) Where mixed tribunals are envisaged for divided societies and in the absence of clear guarantees regarding the real and perceived objectivity, impartiality

and fairness of the national judiciary, consider mandating a majority of international judges, taking account of the views of various national groups, in order to enhance the credibility and perceived fairness of such tribunals among all groups in society;

(j) Insist upon full governmental cooperation with international and mixed tribunals, including in the surrender of accused persons upon request;

(k) Adopt an integrated and comprehensive approach to the rule of law and transitional justice, including proper sequencing and timing for implementation of peace processes, transitional justice processes, electoral processes and other transitional processes;

(l) Ensure the provision of adequate resources for the restoration of the rule of law and the establishment of transitional justice, including a viable and sustainable funding mechanism. Where United Nations-sponsored tribunals are to be established, this should include at least partial funding through assessed contributions;

(m) Consider the establishment of national human rights commissions as part of transitional arrangements.

B. Considerations for the United Nations system

65. I intend to instruct the Executive Committee on Peace and Security, building on the earlier work of its task forces, to propose concrete action on the matters discussed in the present report, for the purpose of strengthening United Nations support for transitional justice and the rule of law in conflict and post-conflict countries and to give consideration, inter alia, to:

(a) Making proposals for enhancing United Nations-system arrangements for supporting the rule of law and transitional justice in conflict and post-conflict societies;

(b) Ensuring that rule of law and transitional justice considerations are integrated into our strategic and operational planning of peace operations;

(c) Updating the current list of United Nations guidelines, manuals and tools on rule of law topics and supplementing those materials as needed;

(d) Proposing new or enhanced United Nations system mechanisms, including common databases and common web-based resources, for the collection and development of best practices, documentation, manuals, handbooks, guidelines and other tools for transitional justice and for justice sector development;

(e) Reviewing best practices and developing proposals for workable national-level rule of law coordination mechanisms involving justice sector institutions, civil society, donors and the United Nations system;

(f) Developing approaches for ensuring that all programmes and policies supporting constitutional, judicial and legislative reform promote gender equality;

(g) Convening technical-level workshops on the rule of law and on transitional justice experiences from around the world;

(h) Establishing arrangements for creating and maintaining an up-to-date roster/database of justice and transitional justice experts, based upon explicit

criteria, reflecting geographic, linguistic, gender and technical diversity, and organized according to particular areas of expertise;

(i) Organizing interdepartmental staff-training programmes on the rule of law and on transitional justice;

(j) Ensuring systematic debriefing of personnel involved in rule of law and transitional justice operations.

Notes

[1] S/PV.4833.

[2] S/PV.4835.

[3] S/PRST/2003/15.

[4] S/PRST/2004/2.

[5] In response to a request from the Chairman of the Committee of 34, the Under-Secretary-General for Peacekeeping Operations sent a letter to all Member States on 25 November 2002, in which information was provided on both the available United Nations expertise and resources available as well as the gaps in this field.

[6] Already in 1948, the Universal Declaration of Human Rights affirmed that recognition of inherent dignity and of equal and inalienable rights is the foundation of freedom, justice and peace. Similarly, the International Covenant on Civil and Political Rights, ratified by 151 States, requires that, even during a state of emergency, the principles of legality and the rule of law must be upheld. In the administration of justice, the Covenant requires equality before the law, fair and public hearings, the presumption of innocence and certain minimum procedural guarantees. Countless United Nations treaties, declarations, guidelines and bodies of principles have been adopted by the Organization to define with particularity the international communities' obligations with regard to justice and the rule of law.

[7] The International Covenant on Civil and Political Rights, for example, obliges its States parties to "respect and to ensure ... the rights recognized" in the Covenant and to "take the necessary steps ... to give effect to the rights ...", including by ensuring an effective remedy for violations and by providing for determination of claims by competent judicial, administrative or legislative authorities, and to enforce such remedies when granted (art. 2). The rule of law loathes arbitrariness in the exercise of authority. The Covenant thus explicitly prohibits arbitrariness in the deprivation of life (art. 6), arrest and detention (art. 9), exclusion from one's own country (art. 12) and interference with privacy, family, home or correspondence (art. 17). The Covenant further guarantees fair and lawful process for arrest and detention (art. 9), imprisonment (art. 10), deportation (art. 13) and fair trial (art. 14). Importantly, article 26 recognizes all persons as equal before the law and entitles them to equal protection of the law without discrimination. Similarly, in ratifying the International Covenant on Economic, Social and Cultural Rights, States parties have undertaken to "take steps ... with a view to achieving progressively the full realization of the rights recognized ... by all appropriate means ..." (art. 2). To be sure, the rule of law is as vital to the protection of economic and social rights as it is to civil and political rights. For a legal system to ensure justice and the protection of the rule of law to all, it must incorporate these fundamental norms and standards.

[8] See A/55/305-S/2000/809.

[9] My request for a subvention to the Special Court was approved in the amount of $16.7 million, on the understanding that any regular budget funds appropriated for the Court would be refunded to the United Nations at the time of liquidation of the Court, should sufficient voluntary contributions be received.

[10] See S/2000/1063 and S/2000/1198.

[11] The matter has been on the agenda of the General Assembly since 1993 under the agenda item "Strengthening the rule of law". In the United Nations Millennium Declaration, heads of State and Government recognized a collective responsibility to spare no effort to strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms.

[12] See "Final Report of the Executive Committee on Peace and Security Task Force for Development of Comprehensive Rule of Law Strategies for Peace Operations" of 15 August 2002, approved by the Executive Committee on 30 September 2002. In response to a request from the Chairman of the Committee of 34, the Under-Secretary-General for Peacekeeping Operations provided a copy of the report to all Member States on 25 November 2002.

[13] Ibid., annex B.

[14] Ibid., annex C.

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Letter dated 30 July 2004 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the President of the Security Council

Upon instructions from my Government and referring to the letter to the President of the Security Council from the Secretary-General of the League of Arab States (S/2004/486), I have the honour to state that the islands of the Greater Tunb, the Lesser Tunb and Abu Musa are integral parts of the Iranian territory and the Iranian Government rejects any claim to the contrary.

In line with the Iranian principled position of enhancing stability and tranquillity in the Persian Gulf region as well as in the spirit of good-neighbourly relationships, the Iranian Government has always offered to negotiate with the relevant officials in the United Arab Emirates with a view to removing any misunderstanding between the two countries with regard to the implementation of the 1971 memorandum of understanding between Iran and Sharja. We believe that letters such as the one referred to above are detrimental to creating a conducive environment for constructive negotiations.

Moreover, especially at a time when the real interests of the Arab nations are at stake, we believe that they would be best served if the Arab League focused on the real issues and refrained from raising frivolous ones, which might be injurious to the common efforts of the regional States to bring stability and normalcy back to the region.

I should be grateful if you would have the present letter circulated as a document of the Security Council.

(*Signed*) M. Javad **Zarif**
Ambassador
Permanent Representative

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